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A N E S S A Y O N I N S U R A N C E S,

E X P L A I N I N G

The Nature of the various Kinds of Insurance practised by the different Commercial States of EUROPE, and shewing their Consistency or Inconsistency with Equity and the Public Good.

I L L U S T R A T E D B Y

Real and extraordinary Cases, stated at large, with OBSERVATIONS thereon, tending to settle divers doubtful Points in making up Accounts of *Losses* and *Averages*.

To which are annexed,

Some brief *Hints* to Merchants and Insurers concerning the Risks to which Navigation is exposed in Time of War; the King of PRUSSIA's *Exposition* in relation to the Capture and Detention of the Ships of his Subjects by the ENGLISH during the late War; the *Answer* from ENGLAND to it; some remarkable *Pieces* concerning the Stopping of Ships in former Wars;

A N D

A famous *Insurance Cause* pleaded before the House of LORDS, and some Mercantile Observations thereon.

By *NICOLAS MAGENS*, Merchant.

V O L U M E I.

L O N D O N,

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M D C C L V.

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AN ESSAY

INSTRUMENTS



The following is a list of the instruments of the
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BY W. COLLEGE, M.A., M.P.

VOLUME I.

Printed by J. M. L. & Co., 10, Abchurch Lane, London, E.C. 4.
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M.DCCCXCV.

TO
THE RIGHT HONOURABLE
PHILIP Earl HARDWICKE,

Lord High Chancellor of Great Britain.

MY LORD,

 HE great and apparent Advantages arising to Trade from well regulated Insurances upon Ships and Merchandize, and the Want of any Treatise in the English Language in which they are fully and clearly explained, induced me to think that it would be of some Service to the Commercial Part of this Nation to publish several Rules and Regulations in relation to Insurance, collected from the Ordinances of the principal Trading Cities of Europe, together with such Thoughts as have occurred to me during many Years Experience.

I have

DEDICATION.

I have endeavoured to set in a clear Light some intricate Points, which, not rightly understood, have given Occasion to Disputes; and to demonstrate the bad Tendency and pernicious Consequences of many Customs which at present prevail in making and settling Insurances. If what I have done conduce to encourage the fair Merchant, and to prevent fraudulent Practices for the future, I shall be sufficiently rewarded.

I presume to dedicate these Papers to YOUR LORDSHIP, as presiding in that Court where many intricate Cases of Insurances have been decided, and numerous fraudulent ones detected.

I rely on YOUR LORDSHIP's Goodness to excuse any Inaccuracies of Expression and Misconceptions of judicial or legal Proceedings in a Merchant who is not perfect in the English Tongue, or skilled in its Laws and Constitutions, for which he has the highest Veneration, as they are the great Security of our Liberties and Properties, and the Envy and Admiration of other Nations.

I am, with the greatest Respect,

MY LORD,

YOUR LORDSHIP'S

most devoted,

most obedient Servant,

January 1755.

NICOLAS MAGENS.

TO THE
READER.



THE first Essay of this Work, as the following Preface shews, made its Appearance in the *German* Language at *Hamburg*; and as some Booksellers here, perhaps from the Consideration that it had been printed there at the public Expence, were solicitous to get it translated, I determined to take that upon myself, as well to prevent a too hasty Publication, as for the Sake of making some Amendments and Additions to it, so that it may now in effect be called a second Essay.

THIS *English* Edition exceeds the *German* in containing (1) several more Remarks and Cases, (2) the late *Prussian* Complaints against the *English* Captures during the last War, and *England's* Answer, together with some other remarkable Pieces concerning the Stopping of Ships, and some mercantile Reflections thereon; (3) an additional Ordinance published at *Bilbao* An. 1738. and some Notes on each Ordinance in particular; (4) several more *English* Acts of Parliament relating to Shipwrecks; and the Charters, and Constitution of the Insurance Companies in *London*. (5) A Summary of all such Treaties of Commerce between *England* and Foreign Powers as are now in Force; being influenced chiefly to make this last Addition by finding in the Collections of this Kind published in *England*, many Treaties omitted, which have been concluded in our Days, and others inserted that are now out of Date. What I could not meet with elsewhere I applied for to those in Authority,

and had the Satisfaction to be furnished with such as I asked for. I received the additional Pleasure, on this Occasion, of being encouraged to proceed in this Work, for the Service of the Public, by more than one eminent Judge, who had the Perusal of it before it was finished. Wherefore I may now venture to say that it contains something worthy of the Consideration of different Sorts of Persons who hold distinguished Ranks in the State. It will on several Occasions be of Service to Persons who are employed in Negotiations abroad, or sit in Parliament at home, to find these Things collected together, with the plain and unbiaſſed Thoughts of a Merchant thereon annexed: And as to the Persons concerned in Commerce, I judge it to be as necessary for Merchants who trade, and Captains who navigate, to Foreign Countries, to be furnished with their Ordinances and their Treaties of Commerce with *England*, as to have a Compass on board.

AND as my View now more particularly tendeth to the Service of *England*, I have endeavoured to explain myself in some Places more amply on what regards our Laws and Customs here: and although I have not the Vanity to expect that my Thoughts of what ought, or ought not, to be Law will make any great Impression upon those whose Province it is to frame and constitute the Laws, until they are thoroughly convinced of the Reasonableness and Necessity thereof, I flatter myself, however, that such of those learned Gentlemen as will take Time to peruse what I have written, will find nothing in it repugnant to Equity and sound Reason: and that particularly, on reading Sect. 9 and 10, they perhaps will be convinced, that *all* Customs of Merchants are not founded on right Principles; and,

and, though become respectable by Antiquity, that they should not avail in any Suit of Law, so as to outweigh the Scale of right Reason.

THE Reader will find that in Sect. 66. I attempt to introduce a quite different Rule from any that has been laid down by other Authors, in what Manner Damages ought to be borne in Cases where two Ships run foul of one another; and that in Sect. 70. and 80. I seem dissatisfied with those Parts of two Acts of Parliament now in Force, which set forth in what Manner a Person insured is to be regarded as a Creditor in Case of an Insurer's Failure: and how, or when, Reassurances may be lawfully made, and the contrary. He will likewise find that I differ in many other Points from what has hitherto been the commonly received Opinion and customary Practice. I must not therefore expect to escape Censure and Criticism: Yet as I am confident that none of the Positions advanced by me are destitute of Reason, I shall the more readily submit the Whole to the Candour of such whose Experience may have qualified them to judge thereof. And indeed if I had not found my Sentiments differ from those who have handled this Subject, I should not have been at the Pains to have written at all.

It must be allowed that the Business of Insurance is carried to a much greater Extent in *London*, than in any other City in *Europe*: Insurances daily are made here on Adventures by foreign Ships, as well as others whose Risks are wholly determinable in foreign Dominions. It must, therefore, doubtless be of Service to the Public to be furnished with a Translation of all the foreign Ordinances made in relation to Insurances: because in case of any
Dispute

Dispute or Law-Suit arising from an Insurance made on Risks in foreign Ships, or determinable in foreign Parts, it will be requisite to be acquainted with the Ordinances of those Countries, in order to frame any solid Judgment whether the Parties concerned have acted right or wrong: of these, however, in all the Books I have searched into here, I have only met with one Translation, and that a bad one, of the *French Ordinance Anno 1681*, and another of the old *Amsterdam Ordinance* published in the Beginning of the last Century; but with none of the more complete ones of latter Years made in several Parts of *Europe*; and which are all inserted in the present Collection, together with some few Notes on each of them.

SHOULD the Legislature at any Time hereafter be induced to make a complete Body of Laws with respect to Insurances, which is so greatly wanted here; the Translations of all these foreign Ordinances must be of Service, as they present an Opening for many wise and necessary Considerations. And whenever that shall happen, I would particularly recommend *one*, not to be omitted, and that is N^o. 1192. in the *Stockholm Ordinance*, which decrees, “that any one insulting his Adversary before the Court of Insurance, either by Word of Mouth or Writing, by Mocking or Railing, by defamatory Accusations or Gestures, he shall incur the Penalty of *Thirty Rixdollars*, and even a higher.”

THE Reasons for inserting a Clause of this Nature, are too obvious to need explaining to People who live in *England*, and recollect in what Manner they have been sometimes treated in the Course of Trials in our Courts.



P R E F A C E

T O T H E

F I R S T E S S A Y

O N

I N S U R A N C E S,

Published at *HAMBURGH*, in 1753.

TH E true scope and intention of all well-calculated commercial laws is, to unite the interest of every individual in such a manner, as that the whole community may be induced to act for the general good. If this principle be adhered to, and a due execution of those laws, and an impartial administration of justice, follow; the merchant, who should be considered as the first mover,

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and the great spring of action in trade, will chearfully pursue extensive views; and by his fortune, credit, and industry, advance the public weal.

§ 2. In states, where the merchants are consulted previous to the enacting commercial laws, and where the security of religion, liberty, and property, is a constitutional principle, there is the greatest encouragement to pursue, and good reason to expect, a general and universal commerce.

§ 3. Tho' merchants, by their experience of the course and connection of trade, may be most capable of giving the best information for proper laws and regulations relative to it; yet as some of them may be unwilling to discover all its secret springs, the legislature ought to advise, not only with merchants, but also with those who have particularly studied its political part: and be extremely careful, that neither the one, nor the other, have private interests to bias, or prejudices to divert them, from giving such advice as may be for the benefit of the public.

§ 4. Many maritime trading cities are as yet without any proper regulations relative to the business of insuring; the settling averages, and bottomries: and in places, where they have some regulations, they are very defective, or at least very obscure. From whence it is easy to infer, that for want of rules to guide, precedents to follow, and mercantile determinations to direct, in affairs of this nature,

nature, many frauds have been committed, and many vexatious law-suits have been commenced, to the great expence and discouragement of merchants. It is now above two hundred years since insurances were set on foot; and if merchants had published some of the most remarkable cases that happened in their time, with the determinations or judicial decisions of them, a valuable collection might have been made of such precedents, as would have been a rule to others in parallel cases.

A merchant now residing in *London*, considering the utility of a work of this nature, has attempted to supply in some measure the omission; not only from his own observations on cases that have fallen within his cognizance during a long and extensive course of commerce both here and in foreign parts, but also from the ordinances and regulations that have been made on this subject by the greatest trading nations; as well as from such authors of repute as have occasionally touched thereon.

§ 5. The principal objects to which particular attention has been, and should be given, are,

First, To prevent, and guard against, the commission of frauds by the merchant, or mariner.

Secondly, That no condition, or restraint, prevent the increase of trade, or hinder new adventures: and

Thirdly, That the public benefit be always preferred to the interest of private persons.

§ 6. That those three points should be the basis of all laws for regulating insurances, is indisputable : but such are the various and complicated circumstances attending transactions of this nature, that general laws cannot provide particular remedies ; and therefore distinct explanations are necessary, to enable persons to form a proper judgment in different occurrences.

§ 7. If merchants would lay down as a fundamental maxim, that reason, public spirit, probity and honour, can allow of no other insurances than those consonant to the above principles, they would not fall into so many strange inventions of unnatural and gaming insurance ; and would be more capable to judge of the rectitude of their case, and never (except upon very sure and just grounds) embark in law-suits.

§ 8. If we have ventured to add some animadversions on laws already made, it is chiefly in cases where the course of trade is altered ; and where additions, or amendments, agreeable to the above principles, are, as we apprehend, wanting.

§ 9. We shall instance some cases, wherein no determinate resolutions have been agreed upon and settled, at least, that we can find. Such, amongst others,

others, are the following ones, *viz.* In what case the addition of the premium, when a loss happens, is to be allowed: the different ways of computing the loss, when total; or when the ship or vessel arrives at her destined port, and part only of her loading is damaged, how to estimate such damage, &c. And in many accidents relating to bottomry, great explanations are, in our opinion, likewise wanting. How far our judgment in such intricate cases deserves approbation, the reader must decide. We are very sensible that we are subject to error; and shall be extremely pleased, if any person, pointing out our mistakes, will substitute what is better, and more to be relied on.

§ 10. If we meet not with the approbation of many merchants, who may think we have kept too much in view the old regulations, and laws, and thereby restrained the liberty of trade; let them reflect, that if the terms and clauses in a policy of insurance were good an hundred years ago, they are the same now: only in proportion as our trade increases, and is extended, by the multiplicity and difference of commodities, things may want explanation, and proper bounds, and determinations.

§ 11. Tho' insurances in general are reputed to be, and doubtless are, both useful and necessary; we must, nevertheless, beg leave to say, that those persons advance too much, who insist that all insurances made in *Great-Britain* on the shipping or product of foreign countries, are beneficial to this nation:
for

for it never has been made appear by experience whether insurances have, upon the whole, and taking all insurers together, been attended with profit or loss.

§ 12. In kingdoms whose products are of a peculiar nature, which other countries endeavour to imitate, and to supplant them in the sale of at foreign markets, it would be bad policy to allow of insurances, by which the competitors may be assisted, and encouraged: but in free cities, whose trade consists in importing goods from other places, which do not interfere with their own produce, no distinction ought to be made; for there insurances are, in every respect, an encouragement to trade.

§ 13. During the late war, in 1747, the parliament of *Great-Britain*, at the time they prohibited all trade with *France*, took into consideration, whether the insurance of goods, imported or exported from *France*, and her colonies, should not likewise be prohibited? Many merchants magnified the advantage arising from this particular branch of insurance: several speeches, said to have been made in parliament on this occasion, are inserted in the *London Magazine* of 1748; and all agree in this fundamental point, That no assistance, or means to preserve the substance of the enemy, ought to be allowed of. But those persons whose immediate interest it was to execute the orders for these insurances for the enemy, insisted, with great confidence, that they were attended with large profits

fits in general ; and alledged that money being scarce, the making such profits on the enemy ought not to be neglected ; and that this lucrative business should not be driven into other countries, by a prohibition here. Several worthy members of parliament took pains to inquire into the true state of this business, and to find out whether in reality *Great-Britain* was so much benefited by foreign insurances as was suggested ; and many disinterested merchants impartially declared their opinions thereon to the following effect :

1. That the supposed profit of 3 *per cent.* on a premium of 30 *per cent.* said, in some of the abovementioned speeches and calculations of profit, to be actually made, is quite uncertain : that in proportion as the number of the *British* ships of war, and privateers increase, much more than is calculated to be gained, may be lost ; and that when only 18 *per cent.* premium was paid for insurance here, the insurers, as well as others, actually know they were great losers by such risks.

2. That no merchants by any skill in computing of chances, or by any other means, can demonstrate what the profit on any voyages will be ; and that all that can be known is, that those alone have reason to promise themselves advantage from insurances, who, in proportion as the premiums rise and fall, and the circumstances are more or less dangerous, underwrite, or do not underwrite, greater or lesser sums.

3. That we have more, or less reason, to expect profit, or loss, from foreign insurance, in proportion

portion as there is a greater or less number of persons who have sufficient experience, and know how to make a proper choice.

4. That it is evident, if more clear money be paid for losses upon foreign insurances, than the gross sums received for premiums, and all charges, amount to, the articles, set forth in the above-mentioned calculations, of commission, brokerage, and deductions, are by no means to be considered as certain and indisputable items of profit: for tho' they bring clear sums into the pockets of the factors, or brokers, who negotiate such insurances, the losses paid by insurers may greatly exceed the whole foreign disbursement; and consequently the balance will be a national loss. This point, therefore, as we mentioned above, is extremely difficult to ascertain; but there is a plain, and incontestable argument against foreign insurances being made for an enemy, which will always subsist, so long as *Great-Britain* has the superiority of naval power, *viz.* That the great object of a maritime nation should be, to take advantage of any rupture with another trading state, to destroy and distress their shipping, and commerce, and to cut off all resources for naval armaments. But to permit such insurances is manifestly to defeat this end; and is contradictory to common sense: for the government, and private merchants are, on one hand, fitting out vessels at a great expence to make captures, and to annoy, and distress the enemy; whilst another set of merchants make good the losses, and furnish means for the continuance of their commerce.

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5. When orders come for insurances from places, where the eager pursuit of premiums is as strong as it is here, it shews a higher premium has been there insisted on: and as people on the spot can be better judges of the nature of the concern, the navigation, ships, commanders, &c. than those at a distance, there can be little hopes of profit by insurances which they reject.

6. That as it is now customary to accept of estimations, in which the foreigner insured, in case of a loss, finds his account better than if the vessel had not been lost, or taken; nay, it is agreed to pay such a sum insured, whether on board the ship or not; it is evident that such agreements have a bad tendency, as they give so much room for frauds.----That no person ever had proved to a certainty, whether by insurance on foreign trade, more, on the whole, had been gained than lost.----That it was contrary to sound and good policy, to grant assistance to undertakings which were contrary to the general interest; and diametrically opposite to the intention of prohibiting the trade with *France*, the natural consequence of which should have been the prohibition of insuring their ships and goods. This is to be understood only in times of war, for in those of peace, such insurances should be considered as a business that is to be left to the free will of the merchant.

It was for these, and other prudential reasons and considerations, that the legislature enacted the prohibition of insurance with *France* during the con-

tinuation of the war ; which, upon the conclusion of the peace, has ceased.

§ 14. As the trade of *Great-Britain* and *Ireland* by sea is certainly more extensive than that of any other nation, 'tis the more to be wondered at, that the legislature has not laid down any complete regulations or laws concerning insurances ; tho' those who by their business may have had a multiplicity of transactions therein, can declare from experience, that whenever a trial at law happens, the wisdom and impartiality of the judges, in summing up and directing the jury (composed of experienced merchants) leaves no room to doubt of their verdict's being according to right and equity, without the prescription of certain rules or ordinances. It must however be remarked, that about three years ago several persons endeavoured to obtain an act of parliament to regulate insurances : but as yet no other act has passed, except that which is in the annexed collection ; whereby the insuring on ships, without having an interest, is prohibited, as well as the taking money on bottomry, without having a property in them equal to the sum borrowed.

§ 15. As the prohibition in the abovementioned act does not extend to foreign ships, it is natural to ask, how it happens that a greater confidence is put in foreigners, than in the natives ? In answer to which it must be observed, that at the time the bill, for the prohibiting of insurance without having a real interest, was depending in parliament, some insurers represented, that on ships from the *Spanish* and
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Portuguese West-Indies they desired to run their risks as a mere wager, rather than return any premium by them received: that is to say, they petitioned for the liberty of insuring upon foreign ships *interest or no interest*. The most plausible reason alledged by them was, that the returns expected in ships bound to *Spain* and *Portugal*, often remained behind, because the goods sent out were left unfold. This reason was partial: and it shews that the legislature ought, as has been already observed, very carefully to examine and weigh whether the representations made by merchants for enacting commercial laws, are dictated by their own, or the public general interest: and a nation so remarkable for equity as the *British*, should particularly be careful in all their laws not to leave any door open for acting unjustly, and exposing, in voyages like the abovementioned, the uninsured property of *British*, as well as of foreign, merchants to premeditated fraud and circumvention. It is alledged by some, that the insuring, *interest or no interest*, in this trade, ought to be permitted, because of the impossibility, in case of a loss, to get authentic certificates to prove it. This is wholly groundless, for no court of judicature can desire stronger proofs than the nature of the thing will admit of, or than can be procured; but even in *Spain*, in prohibited trade, it is possible to get depositions sworn either before foreign consuls, or credible church-notaries: 'tis a known maxim with the *Spanish* tribunal of commerce, *Que la justicia sea executada, y la buena fee guardada*;

i. e. Let justice be executed, and good faith and confidence preserved.

§ 16. To the abovementioned act made in *Great-Britain* relating to insurance, we have thought fit to add an intended regulation in affairs of insurance which was examined, and approved by a committee of lawyers and merchants, appointed by the legislature in 1747-8 ; for tho' these regulations cannot be deemed laws, until they have the sanction of parliament, yet foreigners, who have insurances made in *England*, may thence be informed, that the same fundamental principles govern here, as elsewhere. It was owing to the representation of some merchants, that the forementioned regulations were not carried into a law : they pretended that it required time to consider of them ; and that the nature of the *West-India* trade was such, that it did not, nor could not well allow that persons should be obliged to produce a proof of the weight or measure of their own goods. It is evident this pretence was ill grounded, since neither weights nor measures can be wanting, where goods are shipped off ; and consequently both may, by the declaration made when shipped, by bill of loading, invoice, &c. be proved. But it seems to be the common maxim of those who sit at the helm in these kingdoms, When things are not very urgent, to leave merchants to agree among themselves, and work on.

§ 17. It must be allowed that regulations relating to insurances are seldom permanent, and invariable.

variable. A *Spanish* policy inserted in this collection, and now in use at *Cadiz*, shews how much it differs from the forms prescribed by their ordinances. A deviation from their laws in the model of their policies in *France* we have likewise inserted. Nevertheless, just laws will always retain their due weight in courts of justice, as they serve for a rule to go by in deciding matters, when agreements have been made by private contract, and the parties have neglected to fulfil them, or are suspected of not having acted *bona fide*. Those persons who are equitable and reasonable, require no compulsion by laws and ordinances to do justice; yet, as laws and ordinances serve to explain to every one, wherein right and equity consist, they are of great use in forming a person's judgment. Those merchants who are averse to rules, and desire to have every thing transacted in the dark, create some suspicion of their having sinister views. A creditable merchant can never want business, so long as he minds it with unwearied application, and goes on in a plain, honest, open way. Mystery, and a seeming cunningness, generally create diffidence. Insurers, who do not underwrite without circumspection, and, like prudent persons, inform themselves of every thing, that they may not be injured, generally have a real substance to answer contingent losses. Those who are most just, and ready to pay, when losses happen, will have the most policies brought to them to underwrite, and the greater consequently their choice will be. Such whose judgment is sound, duly weighing all circumstances,

stances, as well with respect to the goods, as to the persons insuring, the condition and well-storing of the ships, the voyage, &c. may, on these considerations, underwrite at lower premiums than usual, and thereby may incite others to fit out their vessels in the same good condition. The consequence of all this is, that the lives of our seamen are less exposed, and the general good is advanced and supported: whereas those who underwrite without distinction, or weighing of things, expose themselves and others to ruin.

§ 18. Those merchants, or insurers, who, when required, give true information what trade may be, or is, prejudicial or dangerous to a state, shew they are the most fit persons to judge of matters relating to trade; and therefore very justly deserve the honour of being consulted when new laws are in agitation for its protection. The part they act is not only commendable, but meritorious: for by advising, and forwarding such laws as secure to the trader the safe and peaceable enjoyment of his traffic, they at the same time advance the good of the public in general.

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A N

ESSAY ON INSURANCES.

§ 1. **B**Y Insurance in Trade is understood a written Contract between Parties. This Contract is called a Policy. The contracting Parties are, the Insured, who pays a Consideration, which is called Premium; and the Insurer, who receives it. For this Premium the Insurer engages to satisfy, and make good to the Insured, unless a Fraud appear, any Loss, Damage, or Accident that may happen; according to the Tenor of the Contract or Policy.

The Meaning
of an Insu-
rance.

§ 2. Such Contracts, *Grotius* observes (*De jure bel. & pacis*, Lib. ii. cap. 12. § 5.) were unknown to the Antients. *Gerard Malynes*, in his *Lex Mercatoria*; *Molloy*, *De jure maritime*, and several other *English* Authors, seem to favour a contrary Opinion, founded on a Passage of *Suetonius*, in *Vita Claudii*, Cap. 18. which alludes somewhat to Insurance: But the learned Civilian and Senator *Langenbeck* of *Hamburg*, in his Annotations on Insurances, has very judiciously and evidently shewn that the Meaning of *Suetonius* was no more than this; That in Time of public Danger, whenever any private Man's Property should be made Use of for the Service of the Commonwealth, the Loss and Damage of the private Person were to be made good by the Public. This is founded in Justice and Equity; and is followed at this Time by all Governments that are guided by equitable Principles: But it cannot be paralleled with the Insurance which we treat of; which is a Matter of Choice, and for Conveniency's Sake, between private Persons. Concerning Insurance of this Nature we meet with nothing older, than an Ordinance made at *Barcelona*, mentioned in *Casaregi's Consolato del Mare*, or a Treatise on the Sea-Laws of *Oleron*, which, though without Date, by some

Its Origin and
Antiquity.

An Essay on Insurances.

some Facts it recites, seems to have been made about the Year 1435; and by the Preamble to this Ordinance it appears that not many others had preceded it, since it begins with these Words; "Whereas in Times past but few Ordinances of Insurance have been made; which Defect wanted Correction, and Amendment," &c. But in 1481, the Crown of *Aragon* being united to the *Spanish* Monarchy by the Marriage of *Ferdinand* the *Catholic* with *Isabella* Heiress of *Castile*, the *Catalans* became subjected to the Laws of *Spain*, and therefore no farther Notice is to be taken of their particular Laws at *Barcelona*. The next remarkable Ordinance is one made at *Florence* in 1523, which is still in Force at *Leghorn*. Of this, as well as of others worth Notice relating to Insurances, a complete Collection will be found in this Essay.

Its Utility.

§ 3. Insurances promote Trade and Navigation, as thereby the Risks of diligent, industrious, and inventive Persons, of small Capitals, are so lessened, that they may engage even in important Undertakings: It is easily understood how the Public are benefited hereby: And by taking such Precaution, as making Insurance, a greater Share of Confidence too is acquired amongst moneyed Men, who seeing this wary Way of proceeding of the Merchant, are the more ready to assist him with their Money, or to maintain his Credit, by freely taking his Bills of Exchange. But though this be allowed, yet as the best Institutions are subject to Abuse, certain Bounds and Regulations are necessary, which, whilst they give such Latitude as may promote and encourage Trade, ought not to be so extremely wide as that ill Consequences may ensue. That this Consideration should be attended to in enacting all Laws and Ordinances relating to Insurances, is not to be controverted; nor that it should also be had in View, in the Explanation and Application of those Laws to particular Cases. In our Essay we shall do our utmost to point out, whatever Experience has shewn to deserve Attention, and in what Respects there seems to have been either too much, or too little Latitude given.

Persons who
may insure.
Persons who
may not.

§ 4. Every Person may insure, who by the Laws of his Country has a Right to dispose of his Property^[a]. But in some Places where Ordinances relating to Insurances are in Force, many are excepted; particularly those concerned either in the Management or Direction of them; as Insurance Brokers,

kers, Commissioners, and Secretaries of any Chambers or Tribunals for judging of Differences that may arise in this Branch of Business, since they ought all to be Men strictly impartial [b]. At *Stockholm* any Person may get Insurance done for him, Ship and Insurance Brokers alone being excluded [c].

Persons who may get Insurance made for them. Persons who may not.

[a] By the *Koningsberg* Ordinance, N^o. 772. by that of *Hamburg*, N^o. 877. and that of *Stockholm*, N^o. 1022. all Persons that are of Age may insure.

[b] Except in *England*, Brokers may not insure. See *Hamburg*, N^o. 878. *France*, N^o. 730. *Amsterdam*, N^o. 550. *Rotterdam*, N^o. 288. *Spain*, N^o. 74. *Stockholm*, N^o. 1022. At *Hamburg*, the Person chosen by the Admiralty for regulating Losses and Averages, who must be a Man of Experience and Abilities, and is solemnly sworn, is also excluded. See his Oath in *Langenbeck*, Page 201. farther explained in *Hamburg* Ordinance, N^o. 878.

In *France*, N^o. 730. } The Deputies, Commissioners, and other Officers in the Insurance Courts of Judicature, }
Rotterdam, N^o. 290. } are not permitted to sign Policies; but at *Midleburg* they may. See N^o. 205.
Stockholm, N^o. 1022. }

In *Stockholm*, the Directors, and Clerks, of the Insurance Company, are also denied the Liberty to sign Policies. N^o. 1022.

[c] But by the said N^o. 1022. it is at *Stockholm* allowed to every one to get themselves insured, except Insurance and Ship Brokers.

§ 5. Essentials in a Policy or Contract of Insurance are, 1st, The Person's Name for whom the Insurance is made, to which this unlimited Declaration is commonly added; *for his own or any other Person's Account*. 2^{dly}, The Goods, or Ships, or their Value, or, in short, the Thing itself, upon which the Insurance is made. 3^{dly}, The Name of the Place, where the Goods are laden, whither bound, the Time when the Risk begins, and when it ends. 4^{thly}, All the different Kinds of Dangers, which the Insurer takes upon him. 5^{thly}, The Consideration, or Premium, received, together with the Name of the Broker employed in the Transaction. 6^{thly}, How much shall be paid in case of Loss, and when due. 7^{thly}, The Day, and Year, the Contract or Policy is executed. 8^{thly}, The News, or Advices, relating to the Adventure, at the Time of making the Contract, or Policy.

The Essentials that are to be expressed in a Contract or Policy of Insurance.

Note, The Requisites of a Policy are set forth in the several following Ordinances:

Amsterdam, N^o. 513. *France*, N^o. 665. *Koningsberg*, N^o. 773. *Hamburg*, N^o. 874. *Stockholm*, N^o. 1031.

And as to the Obligation the Insured is under, in what Manner he is to act, and what he ought to declare, on making and presenting a Policy of Insurance, see particularly the Ordinance of *Copenhagen*, N^o. 1261.

Diversity of
Forms of Po-
licies.

§ 6. There are several Kinds and Forms of Policies, in which the common Circumstances of an Insurance, and the Perils which the Insurers take upon them, are set forth; and Blanks left for inserting the Particulars abovementioned, with the separate Conditions agreed on. Almost every Country has its particular Customs and Forms: And as such a Variety of Things and Circumstances occur, for which Persons insure, 'tis almost impossible to reduce all to certain and determinate Laws; or to describe so many different Forms of Policies, as might exactly fit every Case. It often happens that the Meaning of the Parties is not rightly explained in the Policy; nay, the printed and the written Words frequently contradict each other; so that to do Justice, in these and other controverted Cases, it is indispensably necessary to comprehend the Transaction itself well: And when the true Meaning of the Parties concerned is ascertained, the Insurer will be obliged to make good what he received a Premium for. Great Care however must be taken, not to give Encouragement to premeditated Deceit, or to Things which may be of bad Consequence, though not done with a fraudulent Design.

See the Form of a Policy of *Florence* in the Year 1523, No. 11. Of *Leghorn* in 1750, No. 18. Of *Antwerp* in 1563, No. 51. Of *Cadix* in 1618, No. 105, 115, 119, 126, 128. *Ditto* in 1725, No. 131. Of *Amsterdam* in 1744, No. 573, 574, 575, 576, 577. Of *Hamburg* in 1731, No. 1011, 1012, 1013, 1014, 1015, 1016, 1017. Of *Stockholm* in 1750, No. 1206, 1207, 1208, 1209, 1210, 1211. Of *Copenhagen* in 1746, No. 1259, 1260. Of *London*, No. 1334.

What Things
may be insu-
red.

§ 7. By modern Laws or Customs Insurances may be made on divers Kinds of Merchandizes; on Ships; on the Freight, or Hire of Ships; on the Money for fitting out of Ships; on Bottomry, or Money borrowed on the Keel of a Ship; on Ships and their Cargoes jointly; on the Profit expected by the Goods[a]; on Interest, and no Interest, that is to say, without farther Proof of Interest than the Policy[b]; on the Rise, or Continuance of the current Price of Merchandizes[c]; on Houses; Warehouses, Cellars, and the Value of Goods laid up therein, against Danger from Fire; on Fisheries; on the Lives of Men and Cattle; on Lotteries, &c. the whole according to the Circumstances that may happen among the contracting Parties: Each of which Articles will be more particularly spoken to, in the Sequel of this Work.

[a] Or-

[a] Ordinance of *Hamburgh*, N^o. 881, 882, 883.
of *Amsterdam*, N^o. 518, 520, 521, 526, 527, 528, 529.
of *Stockholm*, N^o. 1023, 1024.

[b] In *England*, by Act of Parliament, on foreign Ships only. See N^o. 1293.

[c] See Case 35.

§ 8. Though all antient, and some modern Ordinances relating to Insurance, enjoin the Insured, in explicit Terms, to run Part of the Risk themselves; nay, in some Cases, that are likely to give Occasion to Fraud, forbid Insuring at all; yet we find that such Injunctions and Prohibitions are commonly evaded, and seldom long complied with: The Custom of overlooking or dispensing with the Disposition of the Law in those Respects has crept in every where; and when a Judge (in Cases of Dispute) finds no visible Fraud committed, he cannot well act otherwise, than to oblige the Merchants to adhere to, and fulfill their Contracts, as the best Way of promoting Credit, and Trade in general.

In *France* the Ordinance N^o. 680. says, "The Persons that insure their Goods, shall still run the Hazard of the tenth Part of the Effects they load, except there be any positive Clause in the Policy, declaring they mean to insure the whole:" And (N^o. 681.) it says, "If the Insured be in the Ship, or if they be Owners, they shall run the Risk of one Tenth, even though they declare, that they mean to insure the whole." Which Distinction between People who have, or have not, a Hand in the Direction of the Voyage, is a very judicious one. Nevertheless by the *Havre de Grace* Policy, N^o. 770. it appears that the People there affect to be under no Restraint, since they say therein; "It shall be lawful for the Insured to insure in full, and even the Premium if he pleases, because we renounce that Article in our Ordinance, and all others which are contrary to this Policy." So that it may very well be asked, what Purpose can any Ordinance serve, if private Men have it in their Power to set it aside, and do what they please? However, 'tis known that such a Renunciation will not stand good in any Court of Judicature in *France*: and though private Insurers in those Parts do, and in Honour ought to do, Justice between Man and Man, when they have no Reason to suspect a Fraud; yet in Countries where Laws to the contrary are in Force, People have less Temptation to, or Opportunity for Guile and Deceit, than in those wherein no Bounds are set to their Actions.

§ 9. Though by the oldest Ordinance relating to Insurances, made at *Florence* in 1523 (see N^o. 1.) as well as by the latest (N^o. 1021.) made at *Stockholm*, it appears that different States adopt the same Sentiments in the Introduction, which is, "That all Insurances in their respective Dominions, whether made for their own Subjects or Foreigners, shall be conformable to the Tenor of their Ordinances, and that no Regard shall be

Damages which occur in foreign Parts, and are adjusted there, ought to be settled here, according to such Adjustments, tho' the Regula-

tions which
were follow-
ed should be
contrary to
our Laws.

“ paid to what may be alledged of the Customs of others :” Yet we would surmise, that these, and other Legislators could not mean to extend their Dispositions beyond their own Jurisdictions: For if it were so, no Insurances could be well made on Adventures in foreign Parts, and much less could Commissions to insure for foreign Accounts be admitted. For Example, *A* at *Hamburg* has Goods in *Spain*, which are sent by a *Spanish* Ship to the *West-Indies*. *B* at *Hamburg* insures them. Some damage happens in the Voyage, which, according to the *Spanish* Law, or Regulations made in that Country, has been deemed a gross Average, and therefore charged upon *A*’s Effects in Proportion to their Value. This Charge he has an undoubted Right to demand of *B* his Insurer, though by the Law at *Hamburg* the Damage should not have been declared a gross Average, but a particular one on the Goods damaged. To corroborate what we alledge we will add, that though in the Ordinance of *Hamburg* (N^o. 873.) it is said, “ That every Thing relating to Insurances, and Averages, shall be judged and decided by that Ordinance,” yet another Article in the same (N^o. 987.) allows, “ That when any Damage happens to the Ship and Cargo during her outward-bound Voyage, it may be regulated at the Place of her unloading.” Moreover, the Ordinance of *Amsterdam* (N^o. 512.) says, “ That all Stipulations, and Conditions, inserted in Policies, contrary to the said Ordinance, shall be null and void, notwithstanding the contracting Parties may have renounced it.” Yet in another Article (N^o. 551.) it is said, “ Except such gross Averages were regulated in a judicial Manner, at the Place whither the Ship was bound ;” consequently we infer that their Ordinance reaches not beyond their own Jurisdiction. Frequent Instances have been met with, in which Laws and Customs have been unjustly made a Pretext to deny the Satisfaction that was due to Foreigners: One we shall mention. A Person in *London*, for his Friend at *Bordeaux*, got 1000 *l*. Insurance made from *Martinico* to *Bordeaux*: The Person at *Bordeaux*, imagining that his Effects might amount to double that Value, had before insured there 1000 *l*. Both Insurances were made under the general Expression of *Goods*. On the Ship’s Arrival, no more than 800 *l*. Value was found to be shipped. The Insurers at *Bordeaux*, who had first underwrote upon those Goods,

kept

kept the Premium on 800*l.* and returned the Proportion on 200*l.* according to the Ordinance, N^o. 686. Upon a Demand of a Return of Premium on the whole 1000*l.* as last insured, by the Person at *London*, the Insurers replied, that, according to the Custom of *London*, those at *Bordeaux* should have returned the Premium proportionally with them, and consequently that the whole upon the 2000*l.* should have been equally shared : Which naturally suggests the following Question ; Suppose both Insurances had been made on Goods expected in that Ship on the Account of a Person in *London*, and that in her Voyage she had been lost, and that no more than the Value of 800*l.* had been found to have been put aboard her : Would it have been disputed in *France* that the Insurers at *Bordeaux*, having signed first, were obliged to pay in full the 800*l.* ? Certainly not ; since their own Laws so ordain it. However such Equivocations and Disputes may always be avoided, by expressing in the Policy, which Insurance shall stand good first : And if this be declared when the Insurance is made, the Insurers in *London*, or elsewhere, will never refuse to underwrite.

§ 10. Approved Customs among Merchants ought doubtless to be greatly regarded ; but the Custom of not returning the Premium in the Case abovementioned, after a clear Demonstration of its Unreasonableness, would not be admitted, we apprehend, by a Jury who should duly weigh the Matter before them [a]. There was a Custom of long standing relating to what Sums might be insured : But upon a plain Demonstration and Conviction of its Absurdity, it was set aside. See Case 3. N^o. C. Another great Error which was formerly practised has also been rectified, viz. the not making a proper Deduction for Freight, Indulto, &c. on Dollars by *Spanish* Ships from *America*, which is proved by Case 4, N^o. A, C. Our particular Customs at home ought not to be made a Reason for denying what is justly due to People abroad who give us their Premiums ; since the Intent and Meaning of those who pay a valuable Consideration for Insurance, is, that the Insurers shall stand in their Place and Stead ; with this particular Obligation however, that the Insured shall neglect or omit nothing that may be for the Interest of the Insurer, whose Right is properly to be set forth and defended. For want of proper Allegations in favour of absent Insurers, when Damages accrue,
many

Customs inconsistent with Reason and Justice ought to have no Weight in Courts of Judicature.

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many Regulations are obtained by interested Persons, very much to the Prejudice of those Insurers. This is not to be wondered at, since the Judges in those Matters may not be sufficiently informed of Circumstances consonant even to their own Laws, on which they might ground their Decisions. Therefore as some Laws by not taking in every Circumstance may want Explanation in many Points, this easily accounts for the Fault found even with authentic Regulations from Abroad.

See Case 8. N^o. P, Q, R.

Case 24. R, S.

Case 25. H, P.

Case 30. G.

[a] The learned *Shuback*, Keeper of the Archives of *Hamburg*, in a Treatise published there *Anno 1751*, entitled *De Jure Littoris*, with great Judgment shews, that the Plea of Custom, where the Custom is bad, ought to be of no Weight in the Decision of Controversies; and quotes a Case as old as the Year 1445, wherein the Magistracy of *Hamburg* had been chosen Arbitrators, between the Duke of *Mecklenburg*, and the City of *Lubeck*, to decide a Dispute about Salvage; and upon the Duke's insisting strenuously on the Right of Custom, his Plea was replied to, and finely explained by the said Arbitrators, who would not allow that any Custom could be of Weight, that was inconsistent with Equity; Mr. *Shuback* says, Page 194, *Optime tamen ex parte Hamburgensium responsum erat, non tantam esse auctoritatem, ut aut rationem vincere possit, aut legem. Etenim nulla consuetudo tam fortis & tam sæpius repetitis actibus radicata est, quin lege posteriori scripta, tolli queat.*

When it is most advisable to particularize the Goods insured in the Policy, or to declare them under the general Term of Merchandize.

§ 11. The Goods to be insured should be declared in the Policy as circumstantially as possible, if the Particulars are known, by their Marks, Numbers, and Package, rather than under the general Expression of Merchandize: Or if it be agreed to insert those Particulars when known by the Insured, they ought by no Means to be omitted, more particularly if the Insurance be made for the Account of several Persons; since by this Specification great Trouble is prevented in proving to the Insurers the particular Goods they insured, which were more, or less subject to Damage.

When not.

§ 12. But on Goods expected from Abroad, it is more advisable to let the Policy be made out under the general Expression of Merchandize, than to insert Particulars; as Orders for the Purchase of foreign Commodities cannot always be strictly complied with by Agents, or Factors, since many Circumstances may vary the Orders given them for purchasing of particular Goods.

Goods. Besides, when a Debt may be dubious, Goods taken in Payment, different from those that were ordered, may be substituted in their Place.

§ 13. Every Person making Insurance under the general Expression of Merchandize, ought not to conceal any Thing he may know to deserve a greater Premium than is commonly given. And for any Damage happening to Goods more liable to it, than others insured at a low Premium, the Insurer ought not to be answerable, any farther than in common with the rest of the Cargo not so subject to Damage.

§ 14. According to the Laws of several Places, such things as in their Nature are soon corruptible, or perishable, or contraband Goods, which in Time of War are liable to Confiscation [a], are not to be understood under the general Expression of Merchandize; since the Insured is obliged not to conceal any Thing from the Insurer relating to the Risk he takes on him. It may nevertheless happen that through the unwarrantable Proceedings of others, the Ship may be exposed to greater Danger than the Insured may know, or be aware of: In which Case the Insurer, not the Insured, is accountable for any Loss or Damage [b].

[a] The antient Ordinances of Insurance made at *Amsterdam*, *Middleburg*, and *Rotterdam* allow Corn, Fruits, Wine, Beer, Oil, pickled Herrings, Sugar, Quicksilver, Honey, red Oker, Butter, Cheese, Meat, Fish, Hops, Syrups, Seeds, or Ammunition, to be comprehended under the general Expression of Merchandize. But in the Ordinances of the Cities of *Rotterdam* (published in 1721.) and of *Amsterdam* (in 1744.) N^o. 249. and 521. only Ammunition, Arms, Gold, Silver and Jewels, are ordered to be declared; and all the other above-recited Goods may be insured under the general Title of Merchandize: But the Insurer shall not be liable to make good any Damage that shall happen to the afore-recited Commodities, under Ten per Cent. (N^o. 545.) The *French* Ordinance (N^o. 669.) only explains in general Terms that the Decay, Waste, and Loss happening through the natural Tendency of the Goods to Corruption, shall not fall on the Insurer: And (N^o. 693.) that Goods subject to Leakage shall be expressed in the Policy; and if not, the Insurer shall not be answerable for Damages befalling them by Tempest, [b] except the Insurance be made upon Returns from foreign Countries. The *Prussian* Ordinance (N^o. 773.) intimates that all Goods subject to Corruption, and Leakage, ought to be described in the Policy. The *Hamburg* Ordinance (N^o. 891.) excepts against the following Goods being understood under the Expression of Merchandize, viz. Salt, Corn, Raisins, Plumbs, Vitriol, dry Fish, Oker, Hemp, Flax, and untarr'd Cordage: By N^o. 893. Powder and Lead, Cannon and Ball, Arms, Muskets and Pistols, Brimstone, Salt-Petre, Pitch and Tar; Materials for the Use of

Though an Insurer has signed under the general Expression of Merchandize, yet ought he not to make good any Damage proceeding from the Quality of Commodities not specified, in the Contract or Policy, as liable by their Nature to Damage.

The Ordinances of some Countries particularly set forth what Sort of Goods shall not be insured under general Expressions.

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of Ships; such as Cordage, Sails, Masts, and every Thing else, which by Powers at War may, or shall, be prohibited from being carried to their Enemies. And the *Swedish* Ordinance (N^o. 1035.) enjoins, that if Jewels, Pearls, or any other precious Commodities, coined, and uncoined Gold and Silver, be packed up, in or with other Goods, it shall be expressed in the Policy; as shall also all warlike Commodities, distinguishing them by their Names; and likewise all perishable and leaking Merchandize, mentioned in the preceding Ordinance of *Hamburg*; unto which were added, Furs, Books, Paper, and Seeds. The *Recopilation* of the *Spanish West-Indian* Laws (N^o. 106.) declares, That under the general Expression of Goods, are not to be understood, Cattle, Slaves, Ships, and Ships Stores, Freights, and Artillery. And most of the preceding Particulars we find in the Ordinance published at *Florence*, June 1526, which plainly demonstrates, that Things were then as maturely considered, as now, and the Difference in the Risk of the Goods insured as nicely regarded; for this Ordinance (N^o. 12.) says, "That under the general Name of Merchandize, shall not be understood, Slaves, Fruits, Horses, Corn, Wines, salted Fish, Vitriol, Alum, precious Stones, Oils, Iron Ore, Household Goods, fine wrought or coined Gold and Silver: And whoever intends to have such Sorts of Goods insured, shall be obliged to express them in the Policy; or it shall *ipso jure* be of no Validity." This shews that People then foresaw, as well as we do now, how the Insurers might be wronged, by not knowing in what Manner, and upon what Sort of Goods they underwrote. Ever since the Year 1749, the followed Conditions are inserted, and printed in the Policies at *London*, viz.

In the Policy of the London Insurance Company, N ^o . 1334.	} Corn, Fish, Tobacco, Hides,	{ Free from all Average, except general, or the Ship stranded. Sugar, Rum,
That of private Insurers - - -	} Corn, Fish, - - - -	{
Hemp, and Flax, free from all Average under 5 per Cent. unless general, or the Ship stranded.		

The Insurers are not liable to make good a Confiscation of Gold and Silver at the Places where their Exportation is prohibited; but they are when they are seized on searching foreign Ships at Sea.

§ 15. Gold and Silver coined and uncoined, Pearls and other Jewels, may be insured at *London*, *Hamburg*, and several other Places, under the general Expression of Merchandize: but as the Exportation of Gold, and Silver, is prohibited in many Countries; it is every where understood that the Insurers are not liable for the Risk of a clandestine Exportation, at the Places where such Prohibitions subsist. So the Ordinance of *Hamburg* (N^o. 104.) says, "If Money, Bars of Silver, Goods, or Merchandize should be detained, or confiscated for not being duly entered at the Custom-house, the Insurers are not answerable for the Loss; but should any Vessel at Sea be stopped, searched, and visited, either by the *Spaniards*, *Portuguese*, or the *English*, in whose Dominions the Exportation of Coin is prohibited, and any found on board such Vessels, and taken away; we are of Opinion, that as in Time of Peace,

“ Peace, and in *Mare libero*, those Nations have no Right to
 “ make such a Search, the Insurers are answerable for such Re-
 “ straint, and Breach of Treaties.

§ 16. Any one who has laden different Sorts of Goods, and intends to run Part of the Risk himself, or to have them insured at different Places, hath it in his Option, which of those Goods he will have inserted in such, or such a Policy, and may chuse from amongst them such Sorts or Parcels for himself, as are least exposed to Average: But then this Choice ought to be made at the Time of taking out the Policies, and the Marks, and Numbers of the Merchandize be therein distinguished: For if an Insurance has at the Beginning been made under the general Expression of Goods, and some Time after the Insured wants to have it expressed in the Policy, as is frequently the Case, that the Risk is to run on such or such Bales, we think the Insurer has a Right to enquire into the Cause of this Specification, and particularly into the Quality, and Condition of the Goods: Since as long as they continued insured under the general Expression of Merchandize, and there happened to be on board others of a greater Value, a joint Obligation subsisted among the Insurers: And none concerned therein ought to be prejudiced by separating or dividing such Goods. An equal Obligation may indeed more properly be said to subsist amongst such of the Insurers as had underwrote for the Value of such Goods as were brought aboard at one Time, and who previous thereto had underwrote a Policy; for it is certain, that if the Ship wherein these Goods were loaded as To-day, should be burnt at Night, none would insure them To-morrow: The Risk of the Insurers who first underwrote should not therefore be confounded with that which Insurers of a later Date must run, especially at those Places, where they answer for the Risks the Goods run while they are aboard the Lighters in their Passage to the Ship; and only those Insurers who signed the first Policy, should jointly run the Risk on the Goods in the first Lighter, and so on, according to the Value. For Instance, *A* at *Hamburgh* causes, *July* 1, his Broker *B* to get a Policy of Ten Thousand Marks made out on Goods to be laden on board the *Constantia* for *Cadiz*; and *July* the eighth another likewise for the same Sum by the Broker *C*. It happened that the first Lighter bound aboard with Goods to the Value of Six Thousand Marks, on

Any one who loads Goods, and runs Part of the Risk himself, or insures them at different Places, may chuse what Goods he will have inserted in each Policy, and which he will reserve for himself,

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July the Ninth was lost, which, according to the Law of *Hamburg*[a] must fall proportionably upon all the Insurers, who had signed the first Policy, those on the second contributing nothing to it: now should all these Goods, which were intended to have been shipped, have been for Account of a Person living at *Cadiz*, and he had made his Insurance there; then according to the *Spanish* Law[b] those who had first underwrote to the Amount of Six Thousand Marks must alone have paid it, and all the other Insurers contributed nothing. In *England* the Insurer's Risk does not commence till Goods are aboard the Ship: the Accidents therefore which they are exposed to in the Lighters do not concern them. Nevertheless a Difference ought to be made between Insurers who have underwrote under several Dates; for suppose a Person had Goods to ship to the Value of Two Thousand Pounds: On *June* the 1st he sent aboard Ten Bales marked M, N^o. 1 to 10, which cost One Thousand Pounds; and on that Day he had Insurance done to that Value under the general Expression of Merchandize. On *June* the Fifteenth he shipped Ten Bales more, M, N^o. 11 to 20, to the Value also of a Thousand Pounds, and caused a like Insurance to be made: Now on the Bales 11 to 20 (perhaps from coming last aboard, and being stowed in a Place subject to Damage) some Average was found at their unloading; why should the Insurers, who most evidently till the Fifteenth of *June* run their Risk solely and separately on N^o. 1 to 10, have any Thing to do with what happened to N^o. 11 to 20, shipped afterwards? Hence we hope it may be allowed us to remark, that although it has always been a general Custom in *London*, to bring all the Insurers, who have signed at separate Times for the Account of one and the same Person, under the general Expression of Merchandize, into one common Risk or Average; yet such a Custom ought to be laid aside, as it is palpably not founded in Equity, considering the remarkable Difference there may be in the Beginning, and Duration of the Risk, by Goods being sooner or later shipped and insured. But with respect to Goods from Abroad, the particular Time of their having been shipped can very seldom be known; and therefore an Insurer would deserve very little Esteem, who, instead of making Satisfaction for Damages, should pretend to demand of the Insured, in such Case, what
it

it is hardly possible for him to know. No Insurer ought to refuse, when demanded, to admit a particular Explanation of Goods insured under the general Expression of Merchandize, when such Explanation is done only for the better understanding, or determining the Risk, and with no ill Design. We must here observe, that when Insurance upon the self-same Goods is made at different Places, it is very material to know the Difference of the Laws and Customs in Force at those Parts, in order to make the proper Explanations in each Policy.

[a] The Ordinance of *Hamburgh*, N^o. 918; of *Middleburg*, N^o. 188; of *Amsterdam*, N^o. 535; of *Rotterdam*, N^o. 269; of *France*, N^o. 686; of *Stockholm*, N^o. 1075; all agree that so many Insurers as have signed upon one and the same Policy, shall contribute Share and Share alike, and that the Policy first made out and begun, is first to stand good.

[b] But according to the *Recopilation de las Leyes de Indias*, in *Spain*, N^o. 85; the Ordinance of *Antwerp*, N^o. 69; Statutes of *Genoa*, N^o. 149; those Insurances first take Place, which appear by their Dates to have been first signed. However the above *Recopilation*, N^o. 124, says, "That in Cases where by several Policies a joint Risk is run on Goods laden in a Ship named; and such Goods have been taken out, during the Voyage, and distributed, or forwarded, in more Ships; all the Insurers answer the Risk they have respectively engaged for; and the first and last equally share the Profit, or bear the Loss."

The *Koningsberg* Ordinance, N^o. 789, says, that when Goods are unloaded, and put into several Vessels, all Damages shall be borne by every one of the Insurers without Distinction, whether engaged in the first, or the last Policies, in Proportion to the Sums underwrote by each. Hence it plainly appears, that all the Ordinances on this Subject stand in Need of farther Explanations.

§ 17. When Merchandizes are sent to distant Parts, from whence no Letters can regularly come, and it cannot therefore be certainly known, in what Species, or in what Ships, the Returns will be made; it is customary to insure on Goods, in any Ship, or Ships [a] expected, or that may come from thence. Thus the Policies from *La Vera Cruz* to *Cadiz* often mention no more than the Insurance being made on Goods, or Money to be shipp'd by *A*, a Factor at the former Place, to the Consignment of *B* at the latter. But this is leaving too much Room for Fraud: For the Shippers at *Cadiz* commonly join the Goods of several of their Friends in one Invoice, which they give the Factor who goes to the *West-Indies*: and although the Register may shew that Goods, or Money came from *A* at *Vera Cruz*, to the Consignment of *B* at *Cadiz*, it does not fix

Insurance on
Ship, or
Ships.

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for whose Account these Goods are, and for whom purchased : So that the Proof of the Property of the Effects must rest solely on *B's* Affidavit. The People at *Cadiz*, indeed, when they join several of their Friends Goods in one Invoice, commonly distinguish them therein by particular Marks ; and order the Factor, when he sends any Returns, to explain in the Register how much belongs to each Mark : But as this is not always strictly observed, Insurers, when Policies are offered upon uncertain Returns, ought not to let the Risk rest upon such a general Explication, as that of *coming under Register from A to B for such a Mark's Account* ; but to insist on being informed, before they underwrite, or by Return of the Post, what these Returns are the Produce of. As for Instance, a Policy might be filled up in the Manner following, *viz. On Money or Goods expected in any Ship or Ships, for the Proceed of an hundred Pieces of Cloth, which in Spain contained three thousand one hundred Varas, and in Value amounted to twenty-four thousand Rials of Plate, sent out in five Bales NM, N°. 1 to 5, under the Care of Don Juan Alfonso, or for the Proceeds of such Things, as are explained in a sealed-up Declaration deposited in the Office.* By thus knowing as much as the Insured himself, the Insurers are as little exposed to Fraud, by signing on a Ship or Ships not named, as if they were named ; and by seeing what Orders were given, and why they were not executed, they are enabled to come at the Truth : For if they doubt of what is communicated to them, they know what Enquiries to make on the Spot. And as to the Ships which can be expected, it is commonly known in what Condition they were, when they went out ; how long they have been kept abroad, and are likely still to remain there. That the Insurers might not be obliged for too long a Detention, it has of late been wisely introduced, in *London*, to make it a Condition in some Policies, not to run the Risk but only on Goods that shall be, or may have been shipped, on or before such a Date ; that is, within a Year or two.

[a] It is ordered in the *Recopilacion de Leyes de las Indias*, N°. 87, That Policies of Insurance on Returns in a Ship, or Ships named or not named, shall, after the Expiration of two Years, be deemed to be no longer of Validity : But this Custom is become obsolete, and is now disregarded at *Cadiz*. And according to N°. 89, any Sum that has been already insured on those Effects shall be expressed in such Policies. N°. 96, enjoins that the actual Load-

Loading shall be proved by the King's Register: And N^o. 102, That the Insurers shall not be liable to make good Damages, in case the Policy doth not agree with the said Register.

The Ordinance of *France*, N^o. 666, says, "Goods loaded for *Europe* from the Ports of the *Levant*, the Coasts of *Africa*, and other Parts of the World, may be insured upon any Ship whatsoever, without naming either the Master or the Ship (which at *Marseilles* they term *In quo vis*) provided the Name of the Person to whom they are consigned, be expressed in the Policy." And pursuant to the late Ordinance of *Rotterdam*, N^o. 279, the Name of him that orders the Insurance, with the Date of the Order, or the Letter of Advice, shall be set forth in the Policy, in case the Name of the Ship be unknown.

§ 18. Some Laws prohibit the comprehending in the Insurance of Ships, any of their Rigging or Tackle, as being subject to be worn out, or their Provisions, or Ammunition, because of their constant Consumption [*a*]. The insuring of Freights is allowed by the Laws of some States, and forbid by those of others [*b*]. But, in our Opinion, a Medium in this Affair would be best; that is, proper Distinctions ought to be made. With regard to Ships that are intended for earning Freights, Care should be taken that the Freight, and the Expences of their fitting-out, be not both insured, or a double Insurance made. But an absolute Prohibition to insure, under the one or the other Title, must certainly be inconvenient for Trade, because there are Undertakings for remote Voyages and Expeditions, where the Expences of fitting-out the Ship, or her Freight, by far surpass the Value of the Ship itself; and if the insuring them were not permitted, it would prevent the Extension of Trade, and thwart many important Enterprizes. The View in making such Limitations could only have been to hinder any one from premeditatedly exposing a Ship and Cargo to Danger, in Hopes of becoming a greater Gainer by their Loss or Damage, than by their safe Arrival at their destined Port. But as it cannot be very difficult for any Insurer, Judge, or Arbitrator, that may be appointed to regulate Damages, to distinguish in what State or Condition the Thing was at the Time of its Insurance; and he can reasonably guess, what it could be when the Ship arrived; there does not seem to be any Necessity for a legal Restriction of insuring in either Case: For it will be easy to ascertain, in Cases of Insurance, from the Charges of fitting a Ship out, what Allowances must be made for Wear and Tear, and what may be consumed in the ordinary

Limitations
in different
Parts concern-
ing the Insu-
rance of
Freights.

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dinary Course of the Voyage, over and above what the Freight may bring in ; and, if this is insured, what ought to be deducted for Men's Wages unpaid, and Provisions unconsumed : which is what has been lately introduced in *London*, under the Expression of *neat Freight* ; though we believe it is not yet universally understood, as may appear by a Case, which occurs to us of an Insurance made in *London*, with the above Clauses. Both Ship and Cargo were entirely lost ; and the Insured insisted on recovering the full Freight according to Bills of Lading, deducting only those Wages, and Port Charges, the Ship must have paid if she had arrived in Safety. This is conformable to what the *Amsterdam Ordinance*, N^o. 526, says, *viz.* " That Freight and the ordinary Charges, usually called common Average (deducting Mens Wages, and other Charges that must have been paid out of it, if the Ship had arrived) may be insured, and recovered so far as it can be proved that the Gain, or Overplus from the Voyage, would have amounted to." To which we think might have been added, " deducting also the Port Charges, &c. outwards, and for Wear and Tear." What properly ought to be understood by neat Freight, or what can be called the Gain, or the Overplus of a Voyage, the Reader will perceive by the following Example :

Suppose a new-built Ship at <i>London</i> with all	<i>l.</i>	<i>s.</i>
her Apparel to cost - - - - -	2000	
Six Months Provisions for 12 Men (on a Voyage for <i>Cadiz</i>) at 8 <i>d.</i> per Day, is 12 <i>l.</i> a Month, or 30 Days - - - - -	72	
Two Months Wages advanced the Men at 22 <i>l.</i> is - - - - -	44	
River Charges, in her outward-bound Voyage, in all - - - - -	24	
	2140	
Premium of Insurance from <i>London</i> to <i>Cadiz</i> , on the Ship valued at 2223 <i>l.</i> 3 <i>s.</i> at 1 $\frac{1}{4}$ per Cent. - - - - -	27	16
	2167	16

For

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For which 2223 <i>l.</i> 3 <i>s.</i> is paid on the	<i>l.</i>	<i>s.</i>
Ship's Loss, at 98 <i>per Cent.</i> - -	2178	13
Deducting $\frac{1}{4}$ <i>per Cent.</i> Commission	10	17
	2167	16

So that the Insured loses nothing of his Principal, or first Cost, supposing the Ship to be lost. Let us now suppose that 300*l.* was insured upon the neat Freight; and that it was proved by the Bills of Lading that the Ship made Freight to *Cadiz*

- - - - - Dollars 2000

The Query will be, what could be recovered? And in order to form a Reply, the subsequent Deductions must be made, *viz.*

$\frac{1}{3}$ of the inward Port Charges and Pilotage, called the common Average, supposed to be 200 Dollars	Dollars.
One Month's Wages 22 <i>l.</i> is at 6 <i>dol.</i> per Pound Ster. - - - -	132
A small Matter for Wear and Tear of the Ship - - - - -	

198 $\frac{2}{3}$
Dollars 1801 $\frac{1}{3}$

At 6 Dollars for a Pound Sterling, is - - £. 300 $\frac{4}{5}$

Now if all the outward-bound Charges were comprehended in the above Valuation of the Ship insured, as is commonly done, then there ought to be a further Deduction of half the Provisions consumed, 36*l.* 44*l.* 24*l.* 27*l.* 16*s.* and the Premium of 300*l.* insured on the Freight, 3*l.* 15*s.* in all 135*l.* 11*s.* from the Freight as above: So that in Strictness the neat Profit of the Voyage, and what ought to be recovered for the 300*l.* insured upon the Freight, does not exceed 164*l.* 9*s.*

[a] The *Recopilacion de las Leyes de Indias*, in *Spain*, only permits two Thirds of the Ship to be insured upon her going to the *Indies*, and no Freight, Artillery, or Ship's Utensils; leaving the *Consulado*, or Court of Judicature, to fix it, in the homeward-bound Voyage; but of late this

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this has not been observed, and People at *Cadix* insure what they please; nay, Insurances *por via de Ayuesta*, that is, by Way of Wager, or Interest or no Interest, are also introduced there. By *Philip* the Second's Ordinance of *Antwerp*, Anno 1563, N^o. 57, the insuring above half the Ship's Value was prohibited, if she was in Ballast, or but half loaded: Yet if above half the Cargo was aboard, her full Value, with the Artillery and Ammunition, might be insured; but not the Rigging. The Ordinance of *Middleburg*, of 1689, forbids Insurances to be made on Ships for above half their Value, or upon the Ammunition and Provisions that are consumed. N^o. 167.

[b] By the *Rotterdam* Ordinance of 1721, N^o. 239, Seven Eighths of a Ship's Value may be insured; and by N^o. 234, the Freight.

The *Amsterdam* Ordinance of 1744, N^o. 518, permits Insurances to be made on the Body of the Ship, with all its Rigging, Anchors, Cables, Sails, Ammunition, Provisions, and Premium of Insurance; N^o. 526, on the Freight.

The *French* Ordinance, N^o. 610 and 681; and the *Koningsberg*, N^o. 781, allow Nine Tenths of the Value of the Ship, Rigging, Tackle, Ammunition and Provisions, to be insured; but Freight, as by N^o. 677 and 780.

The Ordinance of *Hamburg*, N^o. 881; and that of *Stockholm*, N^o. 1024, permit to insure in full the Value of the Ship, with all her Appurtenances, Charges of Outset, and Premium of Insurance; and N^o. 881 and 1023, the Freight.

Sailors Wages
not to be in-
sured.

§ 19. Almost all Ordinances forbid the insuring Seamen's Wages: And the Reason is, that their own Interest may lead them to do all they can for the Ship's Preservation. Sailors hired at *London* for a Voyage to the Streights, are commonly articulated to perform it out and home. By this Covenant it is stipulated, that they shall have one or two Months Pay advanced; which Money so advanced, is by Custom, and Law, admitted to make a Part of the Outset; and may be insured by the Owners who advance it, but by no Body else. We cannot omit observing, that it is good Policy in a Country like *Great-Britain*, where so powerful a Navy, and such a great Number of Seamen, must necessarily be kept up, that Sailors should have an Interest in coming back, and spending their Earnings at home. Accordingly it is wisely enacted by 8 *Geo. I. cap. xxiv. sect. 7*, "That no Master, or Owner, of any Merchant Ship shall pay to any Seaman, beyond the Seas, any Money or Effects on account of Wages, exceeding one Moiety of the Wages due at the Time of such Payment, till such Ship shall return to *Great-Britain, Ireland, &c.*" When we said above that no Insurance can be made on Seamen's Wages, we would be understood to mean, on such Wages as are

are not due till the Voyage be entirely finished : But if they engage to go a long one, and covenant to have some Money paid them abroad to lay out in Goods to bring home, Insurance may be made on such Goods [b].

[a] Ordinance of *Amsterdam*, No. 518.
of *Rotterdam*, No. 234.
of *Stockholm*, No. 1024.

[b] Ordinance of *Hamburg*, No. 780. } Agree that Seamen may get Insu-
of *Amsterdam*, No. 524. } rance done upon Goods, which
they carry out with them ; from whence it follows, that if Money is due to
them abroad for Wages, they may receive and lay it out as they please.

§ 20. Insurance is every where allowed to be made on Money Insurance may
lent on Bottomry, that is (as was before observed) on the Keel, be made on
or Bottom of a Ship ; or on certain Goods specified, and shipped Money lent
on such a Bottom, (which we understand by the Term *respons- on Bottomry,*
dentia) and for which Money usually a Bond is given by the Bor- &c.
rower, wherein are set forth the Conditions of the Loan, and what
Premium is paid for it. This Premium is something more than
the common Interest of Money, with the Addition of a Pre-
mium of Insurance. In consideration of it the Lender takes on
him the Sea-risk of the Ship, or Goods, on which he lent his
Money, and so is in fact an Insurer to the Borrower : And if he
causes himself to be insured, it is to be considered as a Re-
Insurance. The Insurers must be governed, in these Cases, by
the usual Custom of such Contracts in the Countries where
they are made, which greatly differ.

§ 21. The Ordinance of Insurance made at *Amsterdam* in Insurances on
1744 (No. 532) says, That Insurance on Bottomry is free from Bottomry,
gross Average, and also from Damage on Goods proceeding when, and
from their own Quality or Defects. where, free
from gross
Average.

The Ordinance of *Hamburg* (No. 931) says, That whoever
insures on Bottomry, is free of all Average, having nothing to
contribute to it. The judicious *Adrian Verwer*, Merchant at
Amsterdam, who wrote in 1711, upon the Sea Laws, and Bot-
tomry, gives us (Page 177) a Declaration signed the 17th of
September, 1699, by several of the most eminent Merchants of
that City, in the following Words, viz. " We the underwritten
" Merchants declare, That to our Knowledge, it has been the
" constant Custom of this Place, in Affairs of Bottomry, either
" concluded, or to be paid here, to determine, 1. That the
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“ Lender on Bottomry is not obliged to contribute to any gross
 “ Average. 2. That although the Goods pledged should by
 “ any Misfortune be diminished, but still yield more than the
 “ Sum pledged for, the Lender is to receive his full Money;
 “ in which Sense, this Transaction has always been under-
 “ stood here; wherefore if the Borrower would have any
 “ Thing stipulated to the contrary, it must be made a Condi-
 “ tion by express Words in his Bond; otherwise the Practice
 “ is, as we have before declared; and we certify it to have
 “ been so ever since our engaging in Trade: And by Tradition
 “ have learnt that it was the same in former Times: This is
 “ what we have practised in our own Transactions; and we
 “ have never seen a contrary Usage.” Nevertheless the new
 Ordinance of *Amsterdam*, with the Note, or Clause to make
 the Insurers free only from Damage proceeding from the perish-
 able Quality of the Goods, seems to differ from the foregoing
 Declaration. We find in the old Statutes of *Hamburgh*, of
 1603, *Tit. xviii. Art. 6*, that no Average is to be paid for Bot-
 tomry: But the Meaning, we presume, can only have been,
no gross Average, because the preceding *Tit. xvi. and xvii.* treat
 solely of Goods thrown overboard; what in Cases of Stranding
 is to be first saved; how the People that assist are to be re-
 warded; and how the Damages of Ships running against one
 another ought to be regulated: All which relates to the Doc-
 trine of gross Averages. At a Meeting of the Deputies of the
Hanse Towns in *Lubeck*, 1591, some Sea Laws were made,
 (from whence the aforesaid *Hamburgh* Statute of 1603 seems
 mostly to be taken) in which *Art. 56. Of Bottomry*, mentions,
 That if any Person concerned in fitting-out a Ship shall refuse
 his Consent to a Voyage agreed on by a Majority of her Owners,
 and deny paying for his Share of her Outfit; the Master shall
 have Power to borrow Money on such Share, and pay the
 Principal, and Premium, out of it (without Prejudice to any
 other Owner) so far as the Share the said Person has in the Ship
 will satisfy; that is, he who was the Cause of the Expence
 shall make it good out of his private Property. It seems as if
 the Merchants of *Hamburgh* were not at that Time very con-
 versant in insurances: They knew that Masters of Ships, when
 they took any Share in them, used to borrow Money on Bot-
 tomry; wherefore in the Statutes abovementioned, of 1603,
Tit.

Tit. xviii. Art. 1. it is enacted, That no Master shall take more Money on Bottomry, than what his own Share will answer, at the Place where his Owners resided; and that whosoever advances him more, than what his Property will satisfy, shall have no Redress but against his Person and Effects, without any Claim on the other Owners. Nevertheless a Master was permitted, when in foreign Parts, and under Distress, without Credit, or Acquaintance, to take up Money on Bottomry both on Ship and Cargo, for supplying what his Wants might require, either for refitting, or victualling his Ship, on which both the Safety and Success of his Voyage might entirely depend; which being for the mutual Benefit of all concerned, they are by the said Act mutually bound for: And the Captain agreeing that the Loan should be free from Average by any future Accidents, would naturally obtain it on easier Terms, than he otherwise could have done; which Circumstance probably gave Rise to the Notion prevailing in *Holland*, and *Hamburg*, that all Loans on Bottomry should be free from Average: Besides, we apprehend it was not then customary to carry on a Trade in Goods by borrowing Money on Bottomry, or *Respondentia*, inasmuch as the Borrower, in order not to be ruined in case of an Average, would (besides paying a Bottomry Premium) be obliged to pay another of Insurance for Averages only.

As Bottomry Bills from *Curaçoa* and *St. Eustathia* commonly express to pay within Days after their Arrival at *Amsterdam*, 48 Stivers current Money for each Dollar received there, it may not be improper to inform our Readers of the just Value of the nominal Dollar of those Islands at *London*.

A Thousand heavy *Spanish* Dollars pass in those Islands for 1250 Dollars; and when Invoices of Goods coming from thence are expressed in Dollars, to reduce them to *Spanish* Dollars 25 per Cent. must be deducted from the former. Now 10,000 effective *Spanish* Pieces of Eight, worth 12500 Pieces at *St. Eustathia*, being sent by Governor *Heiliger* to *England* in 1753, produced, after a Deduction of 2 per Cent. Freight, and one per Cent. Commission, 2299 *l.* neat at *London*: The nominal Dollar at *St. Eustathia* is therefore equal to 3 *s.* 8 *d.* Sterling, Premium included. Whence it appears, that when 48 Stivers is required at *Amsterdam* for a Dollar, some Profit on lending the Money on Bottomry is included; which, in our Opinion, cannot be recovered from the Insurers, unless they agreed to the Valuation of the Dollar at 48 Stivers, or 4 $\frac{4}{11}$ Shillings Sterling, in the Policy. But to admit a Valuation above 3 *s.* 8 *d.* to 4 *s.* Premium included, is dangerous for the Insurers.

Merchants in *Holland* and *Hamburg*, where the Laws relating to Bottomry are deficient, and differ from those of other Countries, when they

An Essay on Insurances.

make Insurances on Bottomry, ought to weigh their own Case, and explain in their Bond and Policies how they will have it understood.

The Lenders of Money on Bottomry shall contribute to the easing those who take it, in the gross Averages.

§ 22. The *French Ordinance* of 1681, in the 30th *Section*, treats of Bottomry with the greatest Perspicuity. It says, (N^o. 660) That those who lend Money on Bottomry shall bear their Proportion, for the Sum so lent, of all gross, or general Averages; such as Redemptions, Compositions, Jettisons, and Mafts and Rigging cut away for the common Safety of the Ship, and Goods; but not for a simple Average, or particular Damages that may happen, except there be some Agreement for that Effect. And, N^o. 654, it says, "That Creditors for Money formerly due on such Accounts, shall not come in Competition with those, who have actually lent it for the last Voyage."

The Obligation of Bottomry Bonds, best expressed in *Spain*.

§ 23. This Branch of Business, as appears by the Forms of the Bottomry Bonds annexed to the Ordinances N^o. 132, 133, is best understood in *Spain*. The great Sums that are required to fit out a Ship for the *Spanish West-Indies*, and for obtaining a Licence from Court to go with Register, render it necessary to borrow Money on Bottomry in almost every such Expedition; and the Variation of many Circumstances which occur, teaches their Notaries to provide, in their Contracts, for Things that People in other Countries do not think of. We find in the Bond, N^o. 132, this Condition expressed, that the Lender shall run, in Partnership with the Owner, *el Riesgo del Casco, la Quilla, y de los Aprovechamientos del Navio*, that is, "the Risk on the Hull, Keel, and Earnings of the Ship;" which is saying a great deal in few Words. The following Instance will illustrate this. One of these Ships for the *West-Indies*, with all her Tackle and Stores, may cost 40000 Dollars; and perhaps the Licence, Provisions, and Cash advanced to the Sailors, may amount to 60000 Dollars more; all which must be reimbursed by the Freight. Suppose such a Ship, bound for *La Vera Cruz*, had the Misfortune to be stranded at the *Canaries*; the whole Cargo, Provisions, Ammunition, some Tackle and Stores saved, but the Ship condemned as unfit to proceed. In this Case, the Lender of Money on Bottomry, *on the Hull, Keel, and Earnings of the Ship*, would not only be entitled to a Proportion of the Salvage of the Stores, and Provisions, but also

also to a *pro rata* of the Value of the Licence, which might be given to another Vessel, to carry the Things saved to the Place for which they were primarily designed. What that Proportion ought to be, would be difficult to any other, than a *Spaniard* expert in these Calculations, and Navigation, to determine; for the Question would turn, on what would have been the neat Earnings, Gain, or Freight of the Ship condemned? And the Knowledge of the Cost of Ship, Licence, &c. would not be sufficient, because her Owner, out of the Salvage of the Licence and Provisions, ought to receive proportionably to the the Cost of his Ship, and what her Earnings would have yielded neat (if she had arrived safe at her destined Port) more than what he took upon Bottomry, or had insured thereupon; or what the whole stood him in. Hence it appears, that although such a Ship may have been insured, and valued in a Policy, yet when the Loss is not total, the Valuation should be strictly enquired into: For we are of Opinion that the Insurers, if the Vessel's Loss be not total, have certainly a Right to claim their Proportion of Salvage, under whatever Name it may have been disguised. The following Case will, we apprehend, fully prove our Assertion. A *Spanish* Register-Ship was condemned not long ago, at the *Canaries*, as unfit to pursue her Voyage: Her Cargo was all saved; and the *Spaniards* concerned in her allowed the *English* Underwriters the Benefit of the Salvage of her Register, &c. though they had engaged on the Terms of *Interest or no Interest*; only charging them with what was really lost of the Ship. We shall add by Way of Remark, that the *Spanish* Bottomry Bonds are directly inconsistent, in a very essential Point, with the Views either of the Borrower or Lender; for they declare (N^o. 132) that the Risk shall end in Twenty-four Hours after the Ship's Arrival. Now it is impossible to unload her in so short a Time; and till she is discharged, neither the Freight, nor Earnings, on which the Lender in Part runs the Risk, and out of which the Borrower could only have wherewith to pay, can be said to be out of Danger. Therefore Bottomry-Bonds, and all Policies of Insurance made upon Ship and Freight, should specify the Risk not to end till a certain Number of Days after Arrival; and when upon Goods, not till after they are safely landed. It is likewise a Law in *Spain*, that whoever furnished the Money *para el ultimo Avio*, that is, those who
can

can make it appear that the Ship could not have proceeded on her Voyage without receiving this last Money, has a Right against the Ship to recover, preferable to all other Bottomry-Creditors: Nor can any Thing be more reasonable, since for Want of this last Loan, or Assistance, their joint Pledge, which is the Ship, &c. might have lain and rotted, or they must have raised the Money amongst them. Nevertheless it is not enough to declare, or express in the Bottomry-Bond, *to be for Money lent for her last fitting-out*, because all Bonds may contain that Particular; but it must be proved before the *Consulado*, or Court of Judicature, that in fact it was so lent, and given under the Sanction and Cognizance of the Court.

Bottomry
Contracts
how under-
stood in Eng-
land.

§ 24. Bottomry Contracts have every where been made Use of, long before Insurances. They were well understood in *England* in 1622, when *Gerard Malynes*, an expert and learned Merchant, wrote his *Lex Mercatoria*. In *Chap. xxxi*, he explains it to be a Contract jointly of Interest and Insurance, “ for Money so taken up by the Master on the Ship, when
“ he is in great Necessity: And it may be also for Convenience
“ Sake, both of a Borrower and Lender, to pledge Merchandise embarked. As for Example; the Lender knows that
“ such a Merchant doth deal for *Turky*, and that in known Ships
“ trafficking that Way; the Deliverer of Money goeth unto
“ him, and maketh an Offer to lend him 1000*l.* for a Voyage to be made (with Kersies and Tin) to *Tripoli*, and that
“ he will bear the Adventure of that Money, during all the
“ Voyage, which he knoweth is commonly performed within
“ the Year; for (saith he) you know that I am an Assurer,
“ and you do use to assure your Goods; and to increase your
“ Trade, you take up Monies at Use of others in smaller Sums;
“ it may therefore be very commodious for us both, to include
“ the Price of Assurance, and the Use of Money together.
“ Hereupon a Contract is made between them: Ten in the
“ Hundred is accounted for the Use-Money, and Ten in the
“ Hundred for the Adventure of the Goods outwards, and another Ten in the Hundred for the Adventure of the Return
“ homewards; in Conclusion there is Thirty *per Cent.* so that
“ upon Return of the said Ship he is to have 1300*l.* within
“ such a Time. This is a good Bargain for the Lender, how-
“ soever the Borrower of the Money may speed; for the
“ Lender

“ Lender hath not to do with the Sale of the Goods, nor
“ with the Return of them, but he will be sure that (at the
“ Return of the Ship) he may have his Money paid him, not
“ only by the Provenue (or Produce) of the Kersies and Tin,
“ bought with the 1000*l.* lent, but also with the Return of
“ all other Goods which the Borrower did lade more in the
“ said Ship for *Tripoli* as afore said, and in like Manner for
“ other Places.” *Malynes*, however, seems to us not to have
considered in what Manner the Lender (who he says is the
Insurer) should be dealt with, in case the Kersies had been
damaged in the outward-bound Voyage. Or suppose the Bor-
rower had nothing else aboard but those Kersies and Tin, and
the Person who bought them at *Tripoli* did not pay for them,
so that no Returns were brought from thence in the Ship; *Ma-*
lynnes has not mentioned, that the Borrower (as he surely ought)
should have some Abatement of the Ten in the Hundred for
the homeward-bound Voyage, in which he had nothing to
risk. We find in *Molloy, De jure maritimo, Part ii. Chap.*
11, a Strength of Reasoning, with a good deal of Per-
spicuity, on Bottomry. In *Seet. 11*, he complains, that “ many
“ Masters of Ships having insured, or taken up Monies on
“ Bottomry, to a greater Amount than the Value of their Ad-
“ venture, do willfully cast away, burn, or otherwise destroy,
“ the Ships under their Care:” This was made Felony, 16
Car. II. cap. vi. sect. 12. He mentions also, “ that Monies
“ advanced are upon two Securities; the one on the bare Ship,
“ the other on the Person of the Borrower; sometimes upon
“ both: The first is where a Man takes up Monies, and
“ obliges himself, if such a Ship shall arrive at such a Port,
“ then to repay (perhaps) double the Sum lent.” Herein this
Writer is likewise deficient, not having considered, or said one
Word, how it was to be in Case of Average. *Seet. 13*, he treats of
Money borrowed upon a fictitious Supposition, which Custom, he
says, “ came from the *Italians*, and was more unconscionable;
“ and though the same is, as to internal Right, unjust, yet it
“ is daily practised; and it was not long since adjudged * that • C B. Hill.
“ such a Contract was good, according to the common Law of ^{22, 23.} *Car. II.*
“ this Realm, and that on a special Verdict.”

The Contracts, or Bottomry-Bonds, were generally such, as
we exhibit a Form of, in the annexed Collection of Ordinances,
N^o.

19 Geo. II. cap. 37. p. 569.

N^o. 1335, and were frequently made use of till 1746 †, when the Act of Parliament (N^o. 1298) passed, enacting that Money on Bottomry, or *Respondentia*, shall be lent only on the Ship, or the Merchandizes laden on board her. All other Books that we have seen published since those abovementioned, are chiefly copied from them; and although most of them have made Additions, and enlarged on the Subject, yet they are still greatly defective, in not having cleared up one of the main Points, *viz.* how Lenders shall be dealt with in Cases of Average? Nor are there any Bottomry-Bonds in *English* so well adapted to the Nature of Trade as the *Spanish* Forms, N^o. 132, 133. As then we have no fixed Laws, or Rules universally known, in *England*, for settling partial Losses on Bottomry-Monies, it is the Business of the Parties to consider, what Accidents they are exposed to, and to have Provision made in their Bottomry Bonds, expressed in a clear and distinct Manner, how they are to be understood. For Instance: If amongst several Partners in a Ship, there should be one, dissenting from the Resolutions of a Majority to send her on a Voyage, and this Partner will not contribute his Share of her Outset; it is in this Case lawful, in almost every Country, for the Master to take up Money on Bottomry, to supply this Deficiency, if the Owners will not; and to pledge his whole Ship for the Loan; by which all the Concerned are engaged, and liable for the Performance of the Master's Promise to the Lender; but then if he takes the Money, suppose on one Eighth Part only of the Ship, it should always be explained in the Bottomry-Bonds, That although the whole Ship be bound to the Lender for the Payment of his Loan, in case of her safe Arrival, yet he ought to run the Sea-Risk of that one Eighth, equal with any other Owner, and make good his Part of any Average that may happen, since if he insured, it would cost him no more than a regular Premium: And farther; as it is an universal Law, that a Master cannot bottomry his whole Ship at a Place where her Owners reside, but only a particular Share he may have in her himself; it naturally follows from what has been already mentioned, that he should explain in the Bottomry-Bond what Part he holds; for the Lender has no farther Security than such Share, and must, in case of Insufficiency, take his Redress against the personal Estate of the Master, the Borrower.

When

When a Ship in Distress is forced into any Port, where her Owners have no Correspondents to supply the Master with the Money necessary to enable him to prosecute his Voyage, he may take it on Bottomry (as has been before observed) from those who will advance it on the easiest Terms; and pledge his whole Ship, with her Freight, Tackle, Furniture, and Appurtenances, for the Payment: But it is not sufficient that the Master tell the Lender, and express it in his Bottomry-Bond, that such a Sum was necessary; the latter should always (for his own Security, Satisfaction, and Justification) have a proper Survey, and Enquiry made, by experienced and impartial Persons, how far his Allegations were true; and the Result of their Perquisitions should be certified, or attested before some Magistrate, or Justice of Peace. Moreover it is highly expedient that those Repairs or Provisions, which may have been deemed necessary, should be certified and attested as above to have been made, and shipped: For although such particular Steps are not prescribed by any Law, yet Reason dictates that they should be taken; and as the Persons who assist a Master with Money on Bottomry generally charge a Commission upon it, they are obliged in Honour to see Justice done to the absent Owners. For a farther Illustration of this Subject the Reader is referred to Case 34, N^o. P, which happened in *London*, and clearly evinces the Equity of this Doctrine.

§ 25. The Ordinance of *Hamburgh*, (N^o. 882) and that of *Amsterdam* (N^o. 528) gives Leave to insure on imaginary Profits: The latter says, "That whenever this is done, it shall be mentioned, upon what Goods it is, and the same shall be valued in the Policy, and not be subject to any Return of Premium." This Sort of Insurance used formerly at *Hamburgh* to be deemed free of Average, and consequently could not answer the Insured's Purpose, except in Cases of a total Loss: But we think that when any Person, whose Goods promise a great Advantage abroad, or their Price has risen greatly at home, is desirous to insure them for more than they cost, or to insure their Rise or Profit; it would be better to omit the Words, *imaginary Profit*, and in their stead, to explain what he has shipped, by Tale, Weight, or Measure; valuing it in the Policy at the Sum he thinks proper. As for Instance: A Person hath shipped an hundred Lasts of

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An Essay on Insurances.

Wheat, which cost him 6000 Rix-Dollars, and intends to insure a Rise or Profit thereon of $33\frac{1}{3}$ per Cent. he need only agree, and insert in the Policy, that the said Wheat shall be valued at 80 Rix-Dollars per Last: Which is acting fair and open with the Insurers, and will also answer his Purpose better; as will be proved when we come to treat particularly of Valuations.

The Ordinance of *Rotterdam* in 1721, N^o. 238, says, That in case Goods be sent in Return for others, and it happen that the true Value of those Goods so shipped by way of Return cannot be proved, then the Chamber shall set a Value on them, not exceeding 50 per Cent. more than the Capital sent out.

The *Middleburg* Ordinance of 1689, N^o. 168, permits double the Sum to be insured homewards from the *East-Indies*, of what was insured out.

The Ordinance of *Stockholm*, 1750, N^o. 1026, gives Leave to insure the Value of 50 per Cent. more than was sent out.

The Ordinance of *Copenhagen* of 1746, N^o. 1263, agrees with that of *Middleburg* in allowing Insurances from the *East-Indies* home, to be double the Value of what was sent out.

But all these Ordinances seem defective in not explaining whether the Premiums both out and home are to be reputed Part of the Value or Capital expended, and consequently be included in it, or not?

And as we much doubt whether the late Expeditions from *Stockholm* and *Copenhagen* have yielded any Thing near such great Gains, as 50, or 100 per Cent. the Liberty of insuring so much is precarious. The Method in *England* of valuing in the Policy each Pagoda, or Rupee, laid out in Goods shipped from the *East-Indies*, at a certain Number of Shillings Sterling agreed * on, is much rather to be preferr'd, for if the Goods or Silver sent out produced a considerable Benefit, that Benefit will be found in the Quantity of the *East-India* Coin; and if it be publickly known (for Instance) that a Pagoda employed in Diamonds yields 10 or 11 Shillings Sterling in *England*, the Insurers will never object against such a Valuation of each Pagoda in the Policy.

* viz. 9 to 10 Shilling.

Insurers should be very circumspect in signing Policies on Interest or no Interest, as this Method

§ 26. When an Insurance on Interest or no Interest is proposed, the Insurers ought carefully to examine into the Motives that the Persons insured may have for thus Insuring; for it is extremely delicate and dangerous to underwrite to Persons who have any Management in the Voyage, since they may be tempted by Lucre in some Shape or other to destroy the Ship. Were it

it not for the Apprehension of such bad Consequences, there could be no Objection to allowing Merchants to follow their own Inclinations, and permitting Insurances, when they cannot otherwise be done, to be made as a Wager, or Interest or no Interest: But still the Insurers ought to take Care that at the Time of such Insurance there be no bad News of the Ship: or, if it is upon one expected from distant Countries, that there be no room to suspect any fraudulent Design. And upon the whole, we deem it more consistent with Prudence, and more conducive to the Public Benefit, to subject Insurance to some Limitations, than to grant a Sanction to it as Gaming, or Wagering.

The Ordinance of *Amsterdam* of 1744; that of *Genoa* N^o. 147; of *Coningsberg*, N^o. 780; of *Rotterdam*, N^o. 236; and of *Stockholm*, N^o. 1029; all forbid Insurance as Wagers, that is, Interest or no Interest.

By an Act of Parliament 19 Geo. II. (N^o. 1293.) all Insurances on *Interest or no Interest* are expressly prohibited in *British* Vessels; but not in foreign Vessels: Though the Reasons for both seem to be equally strong, as we have shewn in the *Preface* § 15. The Act, however, excepts among the *British* Vessels any private Ship of War fitted out by any of his Majesty's Subjects to cruize on his Majesty's Enemies; allowing (N^o. 1293.) Insurances to be made on them by, or for, the Owners, *Interest or no Interest, free of Average, and without Benefit of Salvage to the Insurers*. In the granting of which Permission, it is evident the Design of the Legislature was to remove every Obstacle or Discouragement which might hinder Persons from concerning themselves in Privateering.

This Affair of insuring *Interest or no Interest* having been very learnedly argued in a Trial before the House of Lords, we shall subjoin to our *Cases* the printed Reasons which were delivered by each Party to their Lordships, for their Information in the Nature of the Case; and the Decision that was given in it, after the Arguments on both Sides had been summed up by the Lord Chancellor: Adding a few Observations on it, which may serve for the Direction of Merchants and Insurers for the future.

§ 27. Merchants may be allowed to try their Skill in judging or conjecturing about the Rise or Fall of the Price of any Commodity, provided no Prejudice arise from it to the Public, nor any Frauds be committed. A Covenant of this Nature may be called a Wager, rather than an Insurance. Goods will preferably be sent to Places where Trade is neither limited nor cramped. Some Persons may lose by a Contract to deliver Goods at a fixed Time; on the other hand, others will be

Insurances on the Rise or Fall of Goods by way of Wager.

Gainers ; and as such Bargains or Wagering must draw the Importation of more Goods than otherwise could be expected, they will always be of Advantage to the Public : Nevertheless we would observe that no such Gaming should be allowed of, in Corn, or other necessary Provisions ; as that a Premium should be given to have such a Quantity delivered at such a Price : Nor should any Forestalling be allowed of, as the buying up Wool, or other unwrought Materials, necessary for home Fabrics ; much less should these Commodities be permitted to be exported : But all Trading Cities, on the other hand, ought to encourage, as much as possible, the Importation of such Goods as are mostly sent out again.

In what Manner Contracts of this Kind are made, see *Case 30, N^o. 399, sur des Marchés d'Option*. People taking too great Latitudes, there was a Restraint laid on these Negotiations, as appears by a Placart of *Amsterdam*, the Date we cannot recollect : Nevertheless they are still practised there, though the fulfilling such Engagements depends on the Party's Honour, as they are not by Law bound to perform their Covenants. Such Contracts likewise were forbid in 1746, at *Hamburgh*.

Insurance on
Lotteries.

§ 28. It has been sometimes practised, when a Lottery was on foot, to insure for a certain Premium, that a Ticket should not be drawn a Blank ; and if it was, that the Insurer should pay for that Ticket a Sum agreed on. If neither the Insurer nor the Insured were any Ways concerned in the Management of the Lottery, so as to give room for a Suspicion of Collusion or fraudulent Dealings, we do not perceive any great Harm in this ; provided moreover that they acted openly, and the Advantage and Disadvantage of the Chance were visible. For Instance ; if five Persons should risk 100*l.* each, to be determined by one Ticket, to which of them the 500*l.* should belong ; there could be no Harm for an Insurer to offer any one of them to restore to him his 100*l.* if he should be a Loser, provided he paid 82*l.* for the Risk : And some would rather content themselves with 418*l.* than be exposed to the Loss of 100*l.* instead of a Chance for 82*l.* And it is very plain that if all five paid 82*l.* to the Insurer, he would have 10*l.* clear Profit without running any Risk.

Note, Such Sort of Insurances appear by *Case 32, N^o. B*, to have been made in 1712, at *Amsterdam*, by the famous *John Law* (afterwards Controller-General of the Finances of *France*) and he must have been a great Gainer, as will be seen by the Calculation added to this *Case*.

Our

Our Insurance Companies in *London* would doubtless have been greatly benefited, had they been permitted (in the Lottery of 1753) to insure at a Premium of 2 $\frac{1}{2}$ *l.* to make good whatever Prize a certain Number pitched on by the Insured should produce; for if every Number had been insured at that Rate, the Insurers would have gained only a Sixth less than the Government raised by the Lottery; and the Insured would have had the same Chance for 2 $\frac{1}{2}$ *l.* as others that took Tickets at 3 *l.* We only remark this by the bye, as it is not to be expected that any Association or Community of Men should have the same Liberty as the Legislature has, to impose a Tax or Penalty on the Folly of Gaming, for so it may with great Justice be called.

§ 29. Insurances from Fire are introduced into several Countries, though not every where under that Denomination. At *Hamburg* there is a *Fire Cassa*, of an old standing, wherein the principal Houses are insured at the Value of 15000 Marks (which is about 1000 *l.* Sterling) to be paid in case of their being burnt; the Insured paying yearly $\frac{1}{4}$ of a Mark for every thousand Marks, for Expences. Every one concerned in this Office, or *Fire Cassa*, contributes to a Loss in Proportion to what his own House stands insured for; but no House is valued at more than 15000 Marks, though it may have cost ten Times that Sum in building. We can account for this Limitation no otherwise, than by supposing the Intention of the Legislature to have been to curb by this Valuation the Pride of the Citizens, and hinder them from being too magnificent in their Buildings: A very wise Maxim certainly in a Trading City! It remains however with us worthy of Consideration, whether the Government of that City should not admit of Insurances to be made on a greater Value than 15000 Marks, because the Price of Labour and Materials is so much increased since that Regulation. We must hint likewise, that it is not a little surprizing that in so populous and fine a Place as *Hamburg* is, an Insurance on Merchandize from Fire has not been settled either by their *Fire Cassa*, or some other Society, since the Risk there cannot be judged so great as elsewhere, by Reason of the vast Plenty of Water, and the Dispositions they have made for extinguishing of Fires.

In *London*, Insurances from Fire are obtainable at such easy Rates, that there are few Merchants but chuse to be insured for their own Quiet. Besides, this Precaution adds to their Credit both at home and abroad, when it is known that the great Capitals lying in their Houses and Warehouses are thus secured from

Insurance
from Fire.

from the Flames. Here the Premium on Brick Houses, or on Goods lodged in Brick Houses, is but 2*s.* on each 100*l.* to the Value of 1000*l.* and 2*s.* 6*d.* on each 100*l.* to the Value of 2000*l.* and so on, except where hazardous Trades are carried on; such as Sugar-Refiners, Distillers, and Chandlers; or on dangerous Commodities, as Hemp, Flax, &c. as will appear by the Proposals and Policy of the *London Insurance-Company* (N^o. 1332) which has taken a very good and necessary Precaution, by inserting the Condition, that, whenever any Houses are burnt, it shall be at the Company's Option, either to pay the Loss, or rebuild them; for this takes away the Temptation from all insured Leaseholders of destroying their Houses, as the Landlords, and not they, would in such case be benefited by it. And it is a similar good Disposition, that when Goods are burnt, the Insurers have it in their Choice, either to make a pecuniary Satisfaction, or to repair the Damage by a Quantity of Merchandize, equal in Kind, Value, and Goodness to those damnified, or lost; which effectually prevents any iniquitous People (who may have a Parcel of Goods on hand greatly fallen in Price) from setting them on fire, in Expectation of recovering from the Insurers what they cost. However as in *London* some have maliciously set fire both to Houses and Merchandize, no Person should ever resent the strictest Enquiry being made into the Calamity; but a general Mistrust in this Particular ought to be esteemed needful, since it is for the Public Good that Delinquents be discovered, and brought to Justice. Where any Grounds of Suspicion appear, it is not doubted but both Judge and Jury will carefully examine into, and canvas the Affair on a Trial, that Incendiaries may receive the Punishment due to their atrocious Crime; and not condemn the Insurers to pay on such slight Evidence, as they often are in Marine Cases. On the other hand it seems clear to us, that the Corporations of Insurance may often blame themselves for too easily admitting and underwriting of Policies on Household Goods and Wearing Apparel, from Persons quite unknown.

Insurance on
Lives.

§ 30. Mens Lives with good Reason are, and may be, insured, to secure to a Creditor the Reimbursement of a Sum advanced to his Debtor for purchasing a Post or Place; out of the Income of which, he may have a Sufficiency, besides his
Main-

Maintenance, and Expences, and Interest, and Premium, to pay off yearly a Part of the Capital : However the Lender ought not to insure the Life of the Borrower without having his Consent. In some Places Insurances are not permitted on the Lives of Persons at the Head of Government[a], but in *London* People take the Liberty to make Insurances on any one's Life without Exception ; and the Insurers seldom enquire much if there are good or bad Reasons for such an Insurance, but only what the Person's Age is, and whether he be of a good Constitution. The common Premium on a good Life from 20 to 50 Years of Age is 5 *per Cent.* and from 50 to 60 Years old, 6 *per Cent. per Annum* ; though these Rates appear by *Case 31. N^o. C.* to be rather too high in the Insurer's Favour ; not but there are some young Persons between 20 and 30, whose Irregularities render their Lives more precarious than others in a more advanced Age[b]. People ought by all Means to be prevented from getting Insurances done with sinister Views, especially that inhuman one of committing Murder to gain the Sum insured ; an Instance of which Villainy happened a few Years since in a *London* Apothecary, who having got his Wife's Life insured, soon after killed her. Underwriters should therefore inform themselves of the Motives, why an Insurance is required, and not be contented with obscure, plausible, or fictitious Reasons. It is indeed true that the Insurers are not obliged to pay to a Murderer convict, as happened in the Case of the aforementioned Apothecary ; yet this does not restore the Life sacrificed. A great Part of the Insurances done on Lives in *London* are for or by People, who have certain Expectations in Reversion after the Death of some Friend or Relation, whose Possessions they have a Mind in Part to anticipate by this Means : But such Insurances seem not easily to be justified, as they frustrate the Intention of the Bequeather, and frequently overset a good Design : And by *Case 32. N^o. B.* we see how soon a fine Estate may be anticipated and run out by this irregular Method. All Ordinances of Insurance allow it to be made upon the Lives of Captives in Slavery ; but to subsist no longer than the Bondage does, or till the Person be redeemed[c].

[a] At *Genoa*, No. 155, No Insurances may be made, *sine licentia senatus, super vita pontificis, neque super vita imperatoris, neque super vita regum, nec car-*

An Essay on Insurances.

cardinalium, neque ducum, principum, episcoporum, neque aliorum dominorum, aut personarum ecclesiasticarum, seu secularium, in dignitate constitutarum.

[b] At London we have an Office for the Insurance of Lives, at *Serjeants-Inn*, in *Fleetstreet*, of which Mr. *Postlethwayt* gives an Account in the first Volume of his *Universal Dictionary of Commerce*, page 150. It was erected the 25th of July, 1706, by a Charter from Queen *Anne*, granted to the then Lord Bishop of *Oxford*, Sir *Thomas Allen*, Bart. and others, for incorporating them and their Successors by the Name of the *Amicable Society for a Perpetual Assurance-Office*; whereby they might provide for their Wives, Children, and other Relations, &c. And the chief View of the Bishop of *Oxford* seems to have been to induce Clergymen to save a Premium out of their yearly Income for insuring their Lives; so that when they died their Families might recover the Sums insured: which has proved to be a Comfort to many Persons. And this doubtless is a very good Institution. All Persons to be admitted are to be between the Age of 12 and 45 Years, and appearing in a good State of Health at the Time of their Admission, when they pay 10 Shillings Entrance-Money, and the Charges of the Policy, and 5 *per Cent.* yearly Premium afterwards: and long as they continue to pay that Premium yearly, their Life may be insured with the Corporation at the same Rate; which elsewhere might be refused. To those who continued yearly to pay 5 *l.* Premium, something more or less than 100 *l.* has been repaid; to wit, from the Year 1734 to 1748 it amounted, at an Average, to 106 *l.* 5s. 7d. and we wonder that it has not been more; but we apprehend that the Corporation is not yet extensive enough, and that it labours under too heavy Charges.

[c] At *Hamburgh*, N^o. 881; *France*, N^o. 673; *Coningsberg*, N^o. 780; *Stockholm*, N^o. 1083; *Copenhagen*, N^o. 1263.

Insurance on
Cattle.

§ 31. When any infectious Distemper reigns among the Cattle, Graziers or Cowkeepers, whose Capital is chiefly employed therein, and may be more than they can afford to lose, are permitted to insure the Lives of their Stock before the Sickneſs has appeared amongst them. By *Case* 23, in the subjoined Collection, it appears, that in a Policy, N^o. 307, made at *Hamburgh* in 1720, each Ox was valued at a certain Price, and for the Risk (which commenced the first of *May*, and lasted to the middle of *October*) Ten *per Cent.* Premium was given: In *July* the Distemper got among them, and out of 62 Oxen insured, only 18 remained alive. It was proved, N^o. 309, that there had been no unfair Dealing in this Fatality; and N^o. 310 shews how the Loss was adjusted. Such Policies should always contain a Declaration by the Person insured, that to his Knowledge no Distemper was at that Time amongst them, and that no diseased Cattle should with his Consent come near those he in-

insured. The Insurers are to take Care that they be not over-valued.

§ 32. When any Loss happens, a Proof of the Value of the Thing serves as a Foundation to make a proper Demand for it. Now the Value of what is insured being inserted in a Policy, and the Insurers by such Insertion admitting of that Valuation, nothing will remain to be proved, save that the Goods valued were put on board.

When Goods insured are valued in the Policy, no Account is required.

§ 33. Though by some Laws it be forbid [a] to value Ships, and Goods above their real Worth, yet Insurers commonly abide by the Valuation made by the Insured, and do not refuse to admit in the Policy any Rate for a Bale named without knowing what it contains [b]. As they receive a proportionate Premium, it is but reasonable they should be determined by that Valuation; except the Insured has had it in his Power to damnify his Goods: And when any Evidence is offered of his having so done, a Judge and Jury ought to insist upon the real Value being proved. If they be found to be greatly over-rated, it will naturally corroborate the Testimony of their being wilfully damaged; otherwise, it will clear the Insured from all Suspicion, where the Evidence is not plain and positive, and procure a Sentence in his favour, though the real Value appeared to be a small Matter less than that fixed upon them.

All such Valuations should stand good, except when there is Evidence of a Fraud.

[a] Ordinance of *Antwerp*, of *Phil. II.* N°. 59, 61; of *Genoa*, N°. 147; of *Middleburgh*, N°. 166, 167; of *Rotterdam*, N°. 278; of *Amsterdam*, N°. 518, 533; of *France*, N°. 680, 684; of *Ceningsberg*, N°. 777, 778.

[b] The *Recopilacion de Leyes de las Indias*, N°. 111, says, the Insured's Oath shall be sufficient to prove the Value insured. By the Ordinance of *Hamburgh*, their authorized Dispatcher of Averages is charged, in case of Damage, to regulate it according to the Valuation in the Policy; or, when no Valuation is made, according to the Invoice.

§ 34. To obtain what is aimed at by a Valuation, it is not sufficient to make it in the Lump, at so much *per Bale*, or *Chest*, because this would only serve in case of a total Loss: But to make a Valuation of Service where Goods are damaged, or partly lost, the Policy must express what particular Goods they were, and their Value, at a certain Price by the Piece, Yard, Pound, &c. the Insured paying the Premium in full on that Amount.

Valuations in the Lump do not answer the End of particular or partial Losses,

In the Articles laid before the House of Commons for an Ordinance of Insurance in *London* (N^o. 1303) it is said the Insureds may fix a particular Value, in Insuring, upon the Weight, Measure, or Tale, or on each Cask, Bale, or usual Parcel or Package, &c.

Valuations
are by some
Circumstances
rendered
absolutely necessary.

§ 35. Some Circumstances render it more particularly necessary to make a Valuation in the Policy; as in Insurances where the Goods shipped are greatly risen in Price since the Time when they were bought and embarked, or insured. Wheat, for instance, may have cost 20s. *per* Quarter, and before the Ship's Departure, or Arrival at her destined Port, may be worth where shipped 30s. in which Case, the Proprietor is certainly at Liberty to insure it at the high Price; but he should express it in the Policy to be worth so much *per* Quarter. To illustrate this still more, we may observe that those who have resided at *Cadiz*, know that a Quintal of Iron (which with all Charges on board stands in about 4 to 4 $\frac{1}{2}$ Dollars) is worth at least 6 Dollars, so soon as it is laden in a Ship licensed for *La Vera Cruz*, at the Freight stipulated by the *Spanish* Ordinance, which is limited to a Dollar and a Quarter at most *per* Quintal. Other Goods paying a much higher Freight, the Owners of Ships never accept of more Iron than what is sufficient to ballast them; and therefore this Commodity is seldom over plenty at *La Vera Cruz*, where it generally sells for 10 Dollars *per* Quintal, or upwards.

Other Reasons for Valuations.

§ 36. When a Person insures upon Goods he expects from Places where no Course of Exchange is current, or where Alterations in the Value of their Coin may be made, the specifying of its Value and Correspondence with ours, in the Policy, is a very necessary Precaution. The Shares of Ships ought also to be precisely valued in the Policy, when it is not their first Voyage, because it will be difficult to prove, what their Worth may be in subsequent Voyages, or what is really lost of the original Value by Wear and Tear. If the Owner of a quarter Part of a Vessel values it in the Policy at 500*l*. and only gets 400*l*. insured, it is clear that he ought to be considered as an Insurer for 100*l*. himself; and although in a gross Average the Insured's Share may be charged but at the Value of 400*l*. he must nevertheless bear his Part for 100*l*. of that Average, as a joint Insurer with the rest. People not duly weighing Things, and considering them as they ought,
often

often make Over, or Under Appraisements, to their own Loss. If a Person intends to be no Loser by his Valuation, he must insure to the full the Sum he values his Goods at, and pay the Premium for it. Yet this must be observed, that in case the Insured hath somewhat over-valued his Goods, and on their safe Arrival they really produce, when sold, less than the Valuation; whatever he paid for Premium on such Over-valuation will be a proportionate Lessening of his Profits. See Case 17. N^o. 265, 266.

§. 37. By the Ordinance of *Hamburg*, Tit. xii. Art. 4. When no Valuation is made in a Policy, the Invoice of the Cost, with the Addition of all Charges, and Premium of Insurance, and Re-Insurance, shall be the Foundation to compute the Loss by; and no Regard be paid to any Market-Price, or imaginary Profit. And this had been the Custom at *Hamburg*, and most other Places, for many Years before that Ordinance, as appears by a Regulation which *Langenbeck* gives in his *Annotations*, page 214, of a Ship's Loss made in 1704: The Cost of 200 Butts, 63 Halves, and 15 Quarters of Currants was computed to be 24438 Ducats, which at 87 Groot, with 16 per Cent. Agio, is - - - - M 77074 4

Premium of Insurance and Brokerage

16 $\frac{1}{2}$ per Cent. - - - - 12572 12

Re-Insurance at ditto - - - - 2051

M 91698

In which Calculation the Word *Re-Insurance* is certainly used in a wrong Sense, as the Meaning can only be, that Insurance might be made as well on the Premium; as principal Cost. A Custom hath almost every where prevailed of calculating in an erroneous Way the *Quantum* that may be insured for Premium. It is evident by the preceding Regulation that the Insured still fell short (in case of a Loss) for the un-insured Premium of 2051 Marks: The Truth of which the following Instance will illustrate. At a Premium of 10 per Cent. the Account would stand thus;

£. 100	at 10	the Premium	is	10
on 10	-	-	is	1
on 1	-	-	is	$\frac{1}{10}$
of $\frac{1}{10}$	-	-	is	$\frac{1}{100}$
of $\frac{1}{100}$	-	-	is	$\frac{1}{1000}$, &c. &c.

which infinite Series, summed up by Algebraical Rules, will make exactly $11 \frac{1}{9}$ per Cent. when the Premium is Ten per Cent. and the Insured desires to be wholly covered from any Loss; but taken in a right Sense, common Arithmetic would solve the Proposition in the following Manner, viz. If for 100*l.* insured, you receive only 90*l.* it is for the Value of 90*l.* that you pay 10*l.* Premium: Therefore as 90*l.* is to 10, so is 100*l.* to $11 \frac{1}{9}$; and therefore to get 100*l.* without Loss, you must insure $111 \frac{1}{9}$. To illustrate this still farther: In the above-mentioned Case cited by *Langenbeck*, the Premium of $16 \frac{2}{3}$ was paid on the Worth of 100 Marks of Currants; therefore you only intrinsically receive for 100 Marks insured $83 \frac{1}{3}$, because you pay $16 \frac{2}{3}$ Premium; and consequently for every $83 \frac{1}{3}$ should insure 100 Marks; and for *M.* 77074 : 4, as above, *M.* 92097 $\frac{1}{3}$ should be insured, and not 91698, as erroneously calculated there, in order to receive clear *M.* 77074 : 4. The Question, whether the Premium of a Premium ought to be admitted as a Part of the Value insured, used to be warmly contested in *London*: But it is not only allowed now to insure there in full for all Premiums, but likewise for the Deduction of 2 per Cent. in paying Losses, as the Insurers make good only 98 for 100, as is clearly stated in our *Case* 3, N^o. 10, 11.

The Difference that Goods coming to a gaining Market make, valued or not valued, reconciled.

§ 38. The Ordinance of *Hamburgh* also explains another Particular, *Tit. xii. Art. 4.* where it is said, “ That when any
 “ Part of Goods valued in a Policy shall be found damaged,
 “ they shall be separated from those not damaged, and sold
 “ publickly by themselves, whether many or few; and the
 “ Dispatcher of Averages shall regulate the Damage conform-
 “ able to the Valuation made in the Policy, without regarding
 “ what the Goods not damaged would produce; and the In-
 “ surer is to pay his Damage notwithstanding the sound Goods
 “ shall produce more than the Valuation of all the Goods put
 “ toge-

“ together.” This, we imagine, will be fully comprehended by reading our *Cases* 18 and 19. Yet, for a farther Illustration, let us suppose that 100 Lasts of Corn shipped at *Dantzick*, with the Premium of Insurance and all Charges, should be calculated to stand at *Hamburg* *Rl.* 5000, which is 50 Rix Dollars a Last, and in the Policy of Insurance it was so valued. On its Arrival at *Hamburg*, 50 Lasts are found not damaged; which, clear of Freight and all Charges, yield neat, at 80 *Rl.* a Last, 4000 *Rl.* and 50 Lasts wet with Sea Water yield neat, at 40 *Rl.* 2000 *Rl.* The Dispatcher of Averages at *Hamburg*, according to the abovementioned Ordinance, might make up the Account, that

As 50 Lasts valued at 50 <i>Rl.</i> is	-	-	<i>Rl.</i> 2500
Which produced	-	-	2000

The Insurer should pay no more than *Rl.* 500

But we think that though the Goods were valued in the Policy, the Insurers ought not to take the Advantage of the Market's Rise to themselves: For notwithstanding the Corn not damaged sold with a Profit of 30 *Rl.* that is at 80 *Rl.* per Last; the Damaged, though it sold but at 40 *Rl.* will still include a proportionable Part of the Advantage of the Market in those 40 *Rl.* and it remains evident that the Corn lost half of its Value by being damaged. Now let its first Cost, or what it was valued at, be considered, and it seems clear that the 50 Lasts cost, and were insured for, 2500 *Rl.* of which (if found) the Produce would have been 4000 *Rl.* and the Deficiency it now leaves is

But then the Insurers ought only to pay for 2500,	1250
And the Insured himself ought to bear for	
its advanced Price at 50 per Cent.	- 1500 - 750
	<i>Rl.</i> 2000

Which may be compared with what is urged in *Cases* 5, 14, 15 and 16, N^o. 127, 254, 259, 261, where we differ something from what the *Amsterdam* new Ordinance says, N^o. 546, “ Such Damages shall be reckoned on the gross Produce:” Which seems not to hold good in all *Cases*; for let us suppose

That

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That 50 Lafts of Corn coft with all Charges and	
Premium of Infurance	Rl. 2000
Being damaged it fold but at 30 Rl. is	1500
If it had not been damaged, it would have fold	
at 60, is	3000

At firft View the Infurers ought feemingly to pay 50 *per Cent.* on the Sum infured, fince the Corn loft 50 *per Cent.* by the Damage, which would be 1000 Rix Dollars: But we are to ftate and confider it in this Manner;

Suppofing the 50 Lafts had not been damaged, at	
60 Rix Dollars they would have produced	Rl. 3000
From whence Freight, and other Charges deducted	500
Remain	2500

Being damaged, it fold only at 30 Rl.	Rl. 1500
The fame Freight, &c. to be deducted	500
	1000

The actual Lofs therefore is - - Rl. 1500

Which in our Opinion ought to be reckoned on 2000 Rl. the	
Sum infured, and 500 Rl. which the Corn would have produced	
as above had it arrived without Damage: So that the Infurers on	
2000 Rl. at 60 <i>per Cent.</i> pay	Rl. 1200
And the Infured on 500 Rl.	300
	Rl. 1500

It is therefore clear that 60, inftead of 50, *per Cent.* muft be paid by the Infurers; which Difference proceeds from what the Infured is no ways to be blamed for, namely, that the damaged Corn pays the fame Freight and Charges, as if it was not damaged.

The Difference it makes, when Goods come to a lofing Market, valued, or not valued, alfo reconciled.

§ 39. We will fuppofe that 2000 Rl. Infurance is made on 50 Lafts of Wheat, valued at that Sum, and that it comes to a lofing Market; then the Account will ftand as follows;

50 Lafts

50 Lasts arriving sound would have sold at <i>Rl.</i> 40, is	<i>Rl.</i> 2000
Deduct for Freight and Charges	500
	1500
But being damaged it sold only at 20 <i>Rl.</i> is	<i>Rl.</i> 1000
Deduct for Freight, &c.	500
	500

Then the Loss is *Rl.* 1000

It is very evident that the *Rl.* 1500, the Corn would have sold for, being reduced to *Rl.* 500, the Loss would be $66\frac{2}{3}$ per Cent.; and $66\frac{2}{3}$ per Cent. on *Rl.* 2000 insured, would be *Rl.* 1333 $\frac{1}{3}$. But as the Insured could have received no more than *Rl.* 1500 had the Wheat come without Damage, he ought therefore to demand no more than *Rl.* 1000; which, with the *Rl.* 500 for the damaged Wheat, makes exactly the Sum he could have sold it for. It is nevertheless our Opinion that the Insured may give up the damaged Corn to the Insurers, and demand, in lieu thereof, 50 Lasts of good sound Corn: Then the Account would stand thus;

50 Lasts at 40 <i>Rl.</i>	<i>Rl.</i> 2000
50 Lasts of damaged would sell only at 20 <i>Rl.</i>	<i>Rl.</i> 1000
Out of which must be paid for Freight, &c.	500
	500

In this Manner the Insurers would lose *Rl.* 1500

Which is just the same Sum as if the Corn had come to a gaining Market, and consequently what they ought to pay. Compare this with *Case* 5, N^o. E, F, G. *Case* 27, N^o. R, S, T.

§ 40. Goods sent from Places where no Exchange is current, as from the Dominions of *Spain* and *Portugal* in *America*, and not valued in the Policy, ought, in case of a total or partial Loss, to be reckoned to the Insurers at no higher Value, than what Bullion, or the actual Coin or Specie brought from thence will produce in *Europe* after the Payment of a Premium for the Risk of the Voyage, Freight, &c. To explain this more fully: The same Specie, or *Mexican Dollar*, which when brought to *Cadiz* passes there for 10 $\frac{1}{2}$ Rials Plate, and is now worth in *London* 4*s.* 9*d.* should not be valued in an Insurance, when shipped at *La Vera Cruz*, at so much as 4*s.* 9*d.* because those Dollars are not worth that Price till delivered ashore at *Cadiz*; and

If Goods are brought from Places, where no Bills of Exchange can be had, but most of the Returns are in Specie, their Value ought not to be reckoned at more than what the Specie from thence would produce neat.

and there they cannot safely be landed without paying the following Freight, Indulto, &c. For Example: In 1753 on 1000 Pieces of Eight in the last Ships from *La Vera Cruz*, at *Cadiz* The King took for Indulto and Marina 9 per Cent.

The Captain of the Ship for Freight

and Counting	- - - - -	3 $\frac{1}{2}$	} 14 $\frac{1}{2}$
The Consulado	- - - - -	1	
The Almirantazgo	- - - - -	$\frac{1}{10}$	
Church and Loan	- - - - -	$\frac{3}{5}$	

And consequently every 1000 Pieces of Eight shipped at *La Vera Cruz* yielded neat to their Owner at *Cadiz* but 858 Pieces; which at 10 $\frac{1}{2}$ Rials of Plate each, is 9116 $\frac{1}{2}$ Rials of Plate, and at 41 Pence for eight Rials, is at *London* 3 s. 10 $\frac{1}{2}$ d. Sterling for each Piece of Eight; the insuring of which to pay 98 for 100, is rating them at 3 s. 11 $\frac{1}{2}$ d.: So that each Piece of Eight should not be valued in a Policy at *London* for above four Shillings Sterling, because the Insured could not possibly have made more by the Specie, had the Ship come safe. Moreover with regard to Returns made in Goods, if the Insured does not declare what they are, nor make any particular Agreement to value and insure a certain Quantity, or Weight, at a certain Price, the Insurers are no ways concerned in the Profit or Loss the Insured may make by the Adventure, they being only answerable for its first Cost reduced into *Cadiz* Money at the same Rate, as Specie brought from *La Vera Cruz* shall produce neat, safely landed at *Cadiz*. See *Cases* 4 and 7, N^o. 14 and 146.

If Goods are shipped from Places, whence any Returns seldom come in Specie or Bills of Exchange, the Value of such Goods cannot well be insured at, or reputed to be worth more than what according to the current Prices they would have yielded neat at the

§ 41. In the last War between *England* and *France* (in 1744) so many of the *French* Insurers failed, that most of their Insurances came to be made in *England*. Great Numbers of their Ships being taken, the Premiums ran up from 18 to 40 per Cent. from their Sugar Islands to *France*. So great a Temptation to our *English* Insurers made them write away blindfold in many Respects, and submit to a Valuation of 11 Pence Sterling for a *Martinico* Livre. The *Frenchman* moreover might insure the Premium, so as to leave him eleven Pence clear for each Livre shipped in the *West-Indies*, notwithstanding that few could be ignorant of the *American* Currency's being above 33 per Cent. worse than the Money in Old *France*; which at the Exchange of about 32 $\frac{1}{2}$ d. per Crown of three Livres, renders the *West-Indian* Livre to be in reality not worth 8 d. So that if the Valuation of 11 Pence was admitted, the Premium of Insurance ought

ought to have been understood as comprehended in it; yet our Insurers allowed the contrary; and Bystanders were surprized to see many Men of Experience underwrite Policies, where some of our Enemies were sure to get more by the Loss of their Ships, than by their safe Arrival: Which may be illustrated by the following Calculations, similar to Facts which at that Time really happened.

A Person insures in London 6000*l.* Sterling, to be paid 98 *per Cent.* in case of Loss, on Goods from *Martinico*, and the Livres of that Place to be valued at 11 Pence Sterling each; at a Premium of 40 *per Cent.* The Ship was taken, and an Account sent from *France*, that 300 Hogsheds of Sugar had been shipped for the Insured, viz.

100 Hhds brown, neat 800 Ct. which cost at	
<i>Martinico</i>	at 16 <i>l.</i>
100 Ditto Terré	800
100 Ditto White	800

l. 12800

24000

32000

l. 68800

Domaine 1 *per Cent.*

688

Rabatage

550

l. 70038

At 11*d.* Sterling *per* Livre, is - *£.* 3210 1 6

Insurance at 40 *per Cent.* for 98, required to

be covered in full, is *£.* 5534 - - 2213 12

£. 5423 13 6

Thus the Insurers had to pay for *£.* 5534,

at 98 *per Cent.* - - *£.* 5423 7

And to return the Premium for *£.* 466,

at 39 $\frac{1}{2}$ *per Cent.* - - 184 1

£. 5607 8

Now it appeared by Advices received of the Prices of Sugars at that Time, that the abovementioned Parcels (after deducting 10, 5, and 2 $\frac{1}{2}$ *per Cent.* for Leakage, and Loss in Weight) could not have yielded

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Above 720 Ct. Brown at 30 <i>l.</i>	-	-	<i>l.</i> 21600
760 Terré 40	-	-	30400
780 White 55	-	-	42900
			1. 94900
Deduct for Freight at 20 Deniers <i>per l.</i> with			
10 <i>per Cent.</i> Average	-	<i>l.</i> 22000	
For other Charges	-	960	
			22960
Consequently if the Ship had come safe it			
would have yielded but	-	-	<i>l.</i> 71940
And this at 11 <i>d.</i> Sterling is	-	-	<i>£.</i> 3297 5
And for Return of Premium no more could			
have been received than as above	-	-	184 1
So the Insured was bettered by the Ship's being			
taken	-	-	2126 2
			5607 8

It is true, that the Prices of Sugars, which before the War had been at 24 *l.* the Brown; 30 *l.* the Terré, and 52 *l.* the White, in the *French* Islands, went lowering; and in *France* they rose above what they are here computed at; so that they could bear to pay a high Premium of Insurance; nevertheless they did not rise so much as to clear besides this the high Valuation of 11 Pence *per Livre*. Our Opinion is, that the Intention of those who first desired to have a *Livre* valued at 11 Pence, was, that the Premium should be included in that Valuation: For is it reasonable to imagine that any one would give a Premium for more than his Returns could possibly produce? It may moreover have happened, that the People here, who introduced this Method, hardly gave themselves the Trouble of a Calculation, or so much as to consider about it; since it seems clear to us, that if they had, they would have avoided exposing their Correspondents to the Risk of failing, by paying Premiums for what their Engagements could never produce. In the War abovementioned Indigo was a Commodity that for a long while did not fall proportionably in the *French* Islands, and rise in *France*: Therefore whatever *Frenchman* over-insured in
England

England on his Indigo, or had not the full Returns shipped, would, in case of the Ship's being taken, be a considerable Gainer upon the Valuation of 11 Pence for a Livre of the French Islands [a].

We think that the right Method of insuring from the French Islands, would be to specify always in the Policy, at what Prices the different Sorts of Sugar, Indigo, Coffee, and Cotton, shall be rated at clear on board; and for what is not so rated, to say that each Livre shall be valued at eight Pence Sterling, Premium included. Agreeably to this, in the Regulation of a Loss of an Insurance made at *Marseilles* in 1736, by Mr. *Lewis Marseille Marion*, a Merchant, and Mr. *Joseph Jullien*, a Broker, of that Place (who were nominated Arbitrators in the Affair) they calculated on the Value that a *Spanish Pistole* bore in France, and in the Sugar Islands; it selling then at *Marseilles* but for 19 Livres, 14 Sols, though it passed in the Islands for 27 Livres: Such a Livre should not therefore be admitted at *London* for more than eight Pence in Time of Peace.

[a] Besides this general Valuation introduced in *London*, though of so bad a Consequence, others of a still worse Tendency, were not refused to be admitted, agreed to, and underwrote: Such as insuring Interest or no Interest, and on Goods valued at the Sum insured, without farther Proof than the Policy in case of a total Loss: Which gave Occasion to Frauds, as is set forth in *Beawes's Lex Mercatoria Rediviva*, Pages 271 and 272. But it was wisely put a Stop to, by passing an Act of Parliament to prohibit insuring either Ships, or Goods, appertaining to the Crown and Subjects of France during the Continuance of the War with them.

§ 42. In most Countries it is expressed both in the Ordinances, and Policies, that the Risk of the Insurers shall begin the Moment Goods go from Shore, and continue till they are landed at the Place of their Destination; and that the Underwriters do not only run the Risk in the Ship named in the Policy, but also in all the Boats or Lighters, that shall be employed in carrying the Goods aboard, and also in fetching them ashore [a]. But the *London* Policies differ herein from all foreign ones, saying expressly (see N^o. 1335) that the Adventure begins "from and immediately following the loading thereof aboard the said Ship, "suppose at *Cadiz*, and so shall continue and endure until the "said Ship, with the said Goods, shall be arrived at *Amsterdam*, and the same there safely landed." According to these

The Time and Place when, and from whence, the Risk of an Insurance upon Goods commences, and when, or where it ends.

Words, it is very clear the Insurers are not answerable for any Accidents which may happen to the Goods in Lighters or Boats going aboard: Yet as the Policy says the Risk shall continue till the Ship with the Goods shall be arrived, and the same safely landed; it can leave no Doubt, in case Ships go to Places, where they cannot possibly come to unload at Quays, or Wharfs, that the Insurers must run the Risk in Boats till the Goods are safely landed. And this was the Opinion of Sir *John Strange*, and Mr. *Hume Campbell*, on an Accident which happened to some Sugars in their Passage from the usual unloading Place on the *Wefer* by Boat to *Bremen*.

[a] Ordinance of *Antwerp*, N^o. 50; of *Amsterdam*, N^o. 510; of *Rotterdam*, N^o. 254, 255; of *Spain*, N^o. 84, 107, 108, 120; of *France*, N^o. 657, 667; of *Coningsberg*, N^o. 788; of *Hamburg*, N^o. 909; of *Stockholm*, N^o. 1207; of *Copenhagen*, N^o. 1259.

The Time
allowed for
unloading of
Goods, after
Arrival.

§ 43. By several Ordinances the Number of Days in which People are to unload their Goods is stipulated [a]. In some Policies likewise the Time is fixed [b]: At *Hamburg* and *London* the Insured are not confined to limited Times: But it can nowhere be expected that the Insurers shall be answerable when it is proved that the Ship was kept designedly to serve as a Storehouse; excepting at such Places as *Cadiz*, where whilst the Goods remain in the Ship, the Owners or Factors have it in their Option to enter them for what Place they please: which occasions the selling large Quantities aboard. If a Captain, without taking any Reward for it, or even taking a Reward, should keep Goods a few Days or Weeks longer than usual, it ought not to prejudice the Insurers. To obviate all Difficulties on Goods being kept an unreasonable Time, it is best to specify in the Policy the Days which may be required to unload the Goods, or that they may lie before unloading; and such Days should only commence from and after the Time permitted to unload, as Impediments by Superiors should always be excepted.

[a] The Ordinance of *Antwerp*, N^o. 62, fixes 15 Days; that of *Rotterdam*, N^o. 214, 14 Days; that of *Coningsberg*, N^o. 788, according to the Bigness of the Ship, 6, 10, 14 Days; that of *Amsterdam*, N^o. 516, 15 Days; and that of *Stockholm*, N^o. 1206, 15 Days.

§ 44. The

§ 44. The Risk on the Body of a Ship, as is expressed in a *London Policy*, is commonly to commence "from her beginning
 "to load at , and so shall continue and endure, until
 "the said Ship with all her Ordinance, Tackle, Apparel, &c.
 "shall be arrived at , and hath there been moored
 "at Anchor 24 Hours in good Safety." We have known
 that in some *London Policies*, where Insurances were made on
 the Body of a Ship expected from some Port abroad, it was
 said that the homeward Risk should commence immediately
 from, and after her Arrival at that Port: Which is interfering
 with the Insurances that may have been made outwards, as in
 these Policies the Insurers run the Risk for 24 Hours after
 she is arrived; consequently the home Risk should not at
 soonest commence, till after the four and twentieth Hour from
 her Arrival.

When the
 Risk of an
 Insurance on
 a Ship com-
 mences and
 ends.

At some Places the Policies express that the Risk on the Ship
 shall commence from the Time she began to take in her first
 Goods, or Ballast, and shall continue till after her being arrived,
 and entirely discharged [a]. At other Places it is said, the Risk
 shall end twenty-one Days after her being arrived; or sooner,
 if before that Time she be quite unloaded [b]. Now it is incon-
 sistent in the Thing itself (as already hinted § 23, in speaking
 of Bottomry) that the Insurer's Risk on a Ship going out to
 earn a Freight, all the Expences of whose Outfit are com-
 monly comprehended in her Insurance, should end in twenty-
 four Hours after her Arrival, since it is hardly possible to have
 the Ship so soon discharged; without which no Freight is gain-
 ed. As to the Clause, to end twenty-one Days after her Arri-
 val, or sooner, if the Ship be sooner discharged; there may be
 an Interval between that Time and her taking in any Goods
 for another Voyage, which intervening Space will be uninsured:
 wherefore we should deem it best when an Insurance is begun,
 as for Example on a Ship from *London* to *Cadiz*, to say, the
 Risk shall commence from, and after the Day the Policy is
 opened, and continue for twenty-one working Days after her
 having had Permission at *Cadiz* to unload, or (if she departs
 sooner from thence) till the Time of her unmooring, and
 weighing Anchor for sailing. When the Insurance is to be
 made from *Cadiz* to *London*, or any other Port, it might be sti-
 pulated, that the Risk should begin twenty-one working Days
 after

after having had Liberty to unload at *Cadiz*, or, departing sooner, from the Time of heaving Anchor to depart.

[a] The Ordinance of *Hamburg*, N^o. 910, and their Policy, N^o. 1014, fixes the Commencement of the Risk, from the Time of taking in the first Goods, or Ballast; and its continuing till the Ship be entirely discharged.

[b] *Amsterdam*, N^o. 516, 573; and *Stockholm*, N^o. 1206, make its Commencement the same; and its ending to be 21 Days after her Arrival, or sooner, if sooner discharged. *Copenhagen*, N^o. 1260, fixes fifteen Days for Discharge.

Places circumjacent, when unloaded to be under one and the same Port.

§ 45. The Ordinance of *Amsterdam*, N^o. 515, says, "That the Risk of the Insurers begins not only at the Place where the Ship loads, but at circumjacent Places, such as the Creeks lying near the Port, and within the Beacons, or Buoys, which a Ship must pass by, going out." At *London* the Insurers run the Risk as beforementioned till the landing of the Goods: And it is there taken for granted, that the Insured have Liberty to put them ashore at any of the customary unloading Places in that Port: For Instance; all Ships laden with Hemp for *London*, do not deliver at the Custom-House Quay; but this Commodity is generally carried down the River in Lighters, and landed at several Wharfs on each Side of the Water. Suppose a Person had sold Stores to the King, and on his Ship's Arrival was ordered to deliver them at *Woolwich*, or *Chatham*; surely this ought not to make any Difference in the Insurance: For though the Words in the Policy run, *till the Ship be arrived at London, and the Goods be there safely landed*, yet it must be lawful for the Insured to land any where within the Port of that Metropolis; which Port has been settled by the Exchequer to be, and declared to extend, from the *North Foreland* in a supposed Line Northward to the *Nase*, and continued Westward through the River of *Thames*, and the several Channels, Streams, and Rivers falling into it, to *London Bridge*. With regard to Goods insured from *London* to *Seville*, the unloading, and landing them at *St. Lucar*, would be but shortening the Risk: And on Ships insured from *Cadiz* to the *West-Indies*, the lading Place ought to be understood, as well from, and at the *Caraques*, or behind the *Puntales*, as in the Bay of *Cadiz*. The Insurers receive a Premium to stand in the Insured's Stead: And if somewhat has been omitted, or is not fully, or rightly explained in a Policy;

Policy; if it appears that the Insurers would have as readily agreed to it, as to what is declared, the Mistake ought always to be construed in Favour of the Insured.

§ 46. All Policies used in *London*, express in the printed Part, "That it shall be lawful for the said Ship, or Vessel, in the Voyage, to proceed, and sail to, and touch, and stay at, any Ports or Places whatsoever:" And the same Liberty is given by the Policies in most other Countries [a]. But Distinction should be made of the Persons who make these Insurances. When it is declared that a Ship shall go directly to a certain Place; and the Master voluntarily stops at others in the Way, with the Knowledge of the Insured, who purposely concealed it from the Insurers, to avoid paying an additional Premium, they certainly ought not in such Case to be answerable for any Accidents that may happen by thus putting in by the Way. And supposing Insurance to be made for Account of an Owner in the Ship, any Enquiries by the Insurers, to be satisfied whether he knew any Thing of the Ship's stopping or not, ought to be allowed of.

In Insurances made for Persons who have any Share in the Direction of the Voyage, Enquiry ought to be made whether the Master touches in his Way, at any Place.

[a] The Ordinance of *Amsterdam* says, N^o. 517, "An Insured who has chartered a Ship, ought not to order her to touch at any other Place, or to change the Voyage different from his Declaration in the Policy: he does, his Insurance shall be null, and void, notwithstanding the Policy contains this Expression, *That it shall be permitted for the Ship to touch and stay anywhere.*" On the other hand it shall be no Prejudice to the Insured if a Master of a Vessel of his own Head puts into Ports, or deviates from his Course, provided it be done without the particular Direction of the Insured. It is the same in the *Middelburg* Ordinance N^o. 177. in the Ordinance of *Rotterdam* N^o. 259. and in the Ordinance of *Stockholm* N^o. 1042, 1043.

§ 47. The Ordinance of *France* N^o. 698. says, "The Insurers shall be discharged from the Risk, without losing the Premium, if the Insured, without their Consent, send the Ship to a Place farther distant than that mentioned in the Policy, though in the same Course; but the Insurance shall have its full Effect, if the Voyage be only shortened." Hence it seems evident, that if Goods be insured in a Ship from *Hamburg* to *Malaga*, and she stops at *Cadiz*, the Goods may be landed there at the Risk of the Insurers: And in this Particular several other Ordinances agree, by declaring that when

It is generally allowed that shortening the Risk for the Insurers cannot be deemed unlawful.

a Ship's Voyage is shortened, the Risk ends, and the Premium is gained; but they are not so explicit as to say that the Insurance shall have its full Effect. *Hamburgh* N^o. 925. *Stockholm* N^o.

1044.

Risks which
the Insurers
are to answer
for-

§ 48. The Damages which the Insurers have to bear, are described in all Policies. Our *London* Policy, N^o. 1334, says "They are of the Seas, Men of War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart, and Counter-mart, Surprizals, Takings at Sea, Arrests, Restraints, and Detainments of all Kings, Princes, and People of what Nation, Condition, or Quality soever; Barratry of the Master and Mariners, and of all other Perils, Losses, and Misfortunes, that have, or shall come to the Hurt, Detriment, or Damage of the said Goods, or any Part thereof. And in Case of any Loss or Misfortune, it shall be lawful to the Insureds, their Factors, Servants, or Assigns, to sue, labour, and travel for, in, and about the Defence, Safe-guard, and Recovery of the said Goods, or any Part thereof [a]."

[a] By the Ordinance of *Hamburgh*, it appears that it was judged proper to leave out, in the new Form of a Policy, N^o. 1012, the aforementioned Liberty about the Salvage, which was in their former Policies. According to *Langenbeck*, Page 379, in Cases of Damage, it thus enacts: "We hereby empower you, and particularly desire of you, or your Factors, to act for us, be it with Profit or Loss, in saving, and benefiting the Goods." The *Amsterdam* new Policy, N^o. 574, and the *Stockholm*, N^o. 1207, give still more Power to the Insureds in a Salvage than the *London* Policy does. They say, "That it shall be lawful for them, when necessary, to act and sell the Goods saved, and distribute the Produce, without their Insurers Consent;" that the Insurers shall pay the Charges, whether any thing be saved or not, and that to Accounts given upon Oath by him that drew them no Objection shall be made.

Risks for
which the In-
surers are not
liable.

§ 49. However a Distinction is every where to be made between the Damage that may happen to insured Goods on board a Ship, and that which occurs by an actual Shipwreck; for this last Damage is without Doubt to be made good by the Insurers, but the former may proceed from their bad Stowage, or their being put in a Place exposed to Wet; from a Deficiency in caulking of the Decks, or otherwise; which Faults the Ship ought to be answerable for [a]. But it is almost become a general Custom, for Masters, as soon as they arrive in any Port, to go on Shore and protest against any Damage that in the Voyage may

may have happened to their Cargoes, by reciting any bad Weather they met with, and any trifling Sea they shipt; which Sort of Protefts ought not to be regarded in fuch a Light as to free the Mafter from a further Examination: at leaft, when the Owners of the Goods have any Reason to believe that their Damage proceeded from the Ship, or the Fault of the Mafter, they may at all Times bring him, and his Crew, to declare upon Oath, what they knew of the Ship's Condition, and in what Place the damaged Goods had been ftowed. However, Infurers ought not to avail themselves of the Pretence for not paying, that the Damages were admitted for the Infured abroad, it being fufficient that the Transactions relating to them have been made out in a regular and customary Way. But the Infurers, after paying, may oblige the Infured to fue for what carries an Appearance of Reason with it [b], at the Expence and Charge of the Infurers.

[a] The Ordinance of France N^o. 690, fays, " Nor fhall the Infurers be obliged to bear the Loffes and Damages happening, to Ship, and Goods, thro' the Mafter and Mariners Fault, except by the Policy they be engaged for the Mafter's Mifdemourours:" which at prefent is not uncommon in France, as appears by a *Havre-de-Grace* Policy N^o. 770.

[b] By the old Ordinance of Florence of 1523, and in the ancient Form of its Policies N^o. 11, and in the new ditto N^o. 18, it is expreffed, " That the Infurers fhall be liable for the Fraud of the Mafter, except for fuch Damage as proceeded from bad Stowage, or undue Entries, and Non-payment of the Customs." By N^o. 14. of that Ordinance " If Goods were ftowed on the Deck, with Leave of the Infured, then the Infurers fhall not be liable for the Damage they received there; but if the Mafter ftowed them on the Deck, without Leave of the Owner or Perfon who had the Infurance made, the Infurers fhall be obliged to pay; but they may have their Redrefs againft the Mafter." And in N^o. 15, it is well expreffed, that they fhall firft pay, and may afterwards go to Law.

§ 50. In Spain, when Goods are fhipt upon Freight for the *West-Indies*, it is customary to pay the Ship 12 $\frac{1}{2}$ Rials of Plate, for each *Dozao* which fuch Goods fhall contain of cubical Measure: and for that Money, or Premium, fo paid, the Ship is obliged to make good, whatever Damage may appear in the Goods at their unloading Port. Hence there cannot be greater Care taken in any Country than in Spain, to have all Places where Goods are ftowed, fo well fecured that it is very difficult

In the Navigation of Ships from Cadix to America, the Ship is bound to make good what Damages the Merchandise receives within Board.

cult for Damage to reach them ; for nothing exempts the Ship from making good the Damages received. Nevertheless the Ship is not obliged to satisfy for Jettisons, Unloadings to pass over Flats, or other common Risks that are to be borne as gross Averages, which fall jointly on the Vessel, Cargo, and Freight : See Ordinance of *Spain*, N^o. 80. It seems however a very strange Custom, that for a Bale of Gold and Silver Stuffs, measuring twenty Palms, and worth perhaps 4000 Dollars, no more Premium is paid to insure the Damage, than for a Bale of the same Dimensions, of Serges, not worth above 200 Dollars. But notwithstanding the utmost Precaution is used in securing the *Spanish* Ships, as already hinted, it now and then happens that they have great Averages to pay. If therefore they would introduce the Custom of having the Value and Contents of each Bale declared, when measured, and the Premium for them paid accordingly, it would be practicable to get some Counter-Insurance made against the Risk they run ; which has more than once, though not often indeed, been the Cause of a Master's not being able to comply with his other Engagements, since such Damages, or their Value, may be detained out of the Freight, and have a prior Right of Payment, to any other Claims.

What Damages Insurers ought to pay for Loss of Cables, Masts, &c. And what not.

§ 51. When a Ship runs ashore, there is no Doubt but that the Insurers on her are obliged to pay for whatever Damage she receives in her Hull, Masts, or Breach of any Part by her Stranding : but then in calculating the Value of the Things lost or damaged, in order to replace or reinstate them, proper Allowances ought always to be made for the Wear of the Things lost, and consequently for the Difference in Value between them and new ones : And this Appraisement should be made upon Oath by such Shipwrights, Rope-makers, Sail-makers, and Ship's Masters, as are known to be Men of Experience, and Probity ; for it is a settled Doctrine that all Appurtenances belonging to a Ship ought to be made of the best Materials, and strong enough to hold good, and resist any Force of Storms, which will often be met with in the common Course of a Voyage. Were Insurers obliged to pay for every Cable and Rope that breaks, and for every Sail that splits, or blows to Pieces, there would be no other Way of insuring upon Ships, but free of all particular Averages. We nevertheless are of Opinion that the Insurers are liable for whatever Loss or Damage may accrue to a Ship by the Master's
extra-

extraordinary Endeavours for her Preservation : For Instance, if to avoid, or escape from an Enemy, a Ship anchors in an open Road, under the Protection of some Castle, and there parts her Cable, it ought doubtless to be considered as a gross Average. Moreover, if the Master of a Ship, finding her too near a Lee-Shore, apprehends that to save his Vessel he must carry so much Sail as to risk the carrying his Masts by the Board, and to save them, deliberately comes to an Anchor ; in this Case, should a Cable be lost, if it is not to be considered as a gross Average, it ought at least to be made good by the Insurers upon the Ship. And agreeably to this a Regulation was made at *Hamburg* in 1725, by the Dispatcher of Averages, *Jurgen Greve*, in a Case recited by *Langenbeck*, Page 225, of the Ship *Juffrowe Johanna*, which being in Danger, the Master to save her, anchored by *Hillig Land*, where several of his Cables parted. We find in a Treatise wrote by *Quintin Van Weyssen*, about 1563, whose Judgment is every where deservedly held in the greatest Esteem ; that if the Master of a Ship has advisedly dropt Anchor in rocky Ground for her Safety, then the breaking or losing his Anchors and Cables, though it cannot properly be deemed a gross Average, ought to be recompensed as a good Piece of Service.

We remember also that at *London*, in certain Cases, where it was proved that Ships endeavouring to keep clear of a Lee Shore, had new Sails blown away, and Cables parted by anchoring in open Sea, to avoid driving ashore, the Losses being occasioned by striving to preserve the whole, were made good by the Insurers, whose Interest it always is (as well as for the common Advantage) to make it the Master's Interest to spare nothing, in such extraordinary Cases, to save the Ship from stranding, by carrying out fresh Cables when others have parted. If a Master, being himself a Part Owner in the Ship, and fully insured, knows that he shall not be paid for the first Cables he may carry out, and lose by their breaking, he is discouraged from risking others, though with the Appearance of saving his Ship, as he may think it more for his Advantage to let her go ashore on the first Cable's parting, because the Insurers must then pay him the full Insurance ; whereas if she were saved by veering out other Cables, he would lose the Value of those Anchors, or Cables that were lost, or broke before : We must add, that as it is for the common Good, and for the particular

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Interest of all Insurers, that Ships should not go to Sea without good Cables, Sails, &c. those Cables that are not sufficiently strong for a Ship to ride with, in the usual loading Places, or any Sails blown to Pieces by stormy Weather in the common Course of a Voyage, should not be paid for by the Insurers; as it might be an Incitement for Masters not to go without good ones.

When Things are lost for which the Insurers are liable to pay, the Question naturally arises, how, and at what Value, they ought to make Satisfaction? for the Value they had at the Place from whence the Insurance commenced and the Premium was paid, might not be so much, as the Purchase of others in lieu of them. Our Opinion in this Case is, that the Insurers should not be responsible for the whole of what the replacing them may cost, but that a Part of it ought to be borne by the Owners of the Ship, in Proportion to what it could be proved they would be benefited by the Voyage, or what their Freight exceeded the Outset insured in the Ship's Valuation. Suppose a new-built Ship of 600 Tons bound from *London* to the *East-Indies*, amounts, with all Stores, Provisions, and advanced Money to the Sailors, in the whole, as fitted for Sea, to 10000 *l.* and is insured in full for that Sum: In her Return she happens to lose her Foremast, and Bow-sprit, by crowding Sail upon a Lee Shore, which to replace on the Spot, cost 1500 *l.* though in *London* they might have been bought for 500 *l.* We are of Opinion that in this Case, if the Home Freight on Goods aboard amounted to

There might be deducted for Victualling and	
Wages of 60 Hands, for 6 Months we suppose wanting to accomplish the Voyage	£. 900
Other Charges	300
	1200.
Risk for the Owners	£. 6800

The most equitable Way then would be to make		
The Insurers bear for £. 10,000	} of the above	{ £. 892 $\frac{1}{16}$
The Owners for 6800		
	1500 <i>l.</i>	607 $\frac{1}{16}$
		£. 1500

Several

Several Arguments may however be alledged to excuse the Insurers from being liable for more than the Value of the 500*l.* which the Mast, &c. would have cost in *London*, concerning which the Reader is referred to what appears in *Case 20*, N^o. N, O.

§ 52. In *London*, where the *East-India* Company hire all the Ships they employ in their Trade from private People, there is a general Condition in the Charter-Parties, that every Ship shall make good all Damages that may happen to the Goods on board her; and farther, that the Company shall contribute nothing to any Damage the Ships may receive by either cutting or carrying away Masts, losing Cables, and Anchors, or any other direful Effects of tempestuous Weather: So that what general Custom has made a gross Average to be borne by Ship and Cargo, falls solely on the Owners of those Vessels the Company employ: And the Loss of Cables, Anchors, Sails, and Masts, which cannot be replaced in *India*, but on much more costly Terms than in *England* (where the Premium of Insurance has only been paid on its Value) has occasioned great Disputes and Controversies between the Insurers and Owners of those Ships; so that of late some Insurers will not underwrite, without the exprefs Condition of being free from all Average.

Conditions
between the
East-India
Company,
and Owners
of Ships,
about Dama-
ges and Aver-
ages.

§ 53. Whatever the Master of a Ship in Distress, with the Advice of his Officers and Sailors, deliberately resolves to do, for the Preservation of the whole, in cutting away Masts or Cables, or in throwing Goods over-board to lighten his Vessel, which is what is meant by Jettison or Jetson, is, in all Places, permitted to be brought into a general, or gross Average; in which all concerned in Ship, Freight, and Cargo, are to bear an equal, or proportionable Part, of what was so sacrificed for the common Good, and it must be made good by the Insurers in such Proportions as they have underwrote. However, to make this Action legal, the three following Points are essentially necessary.

General, or
gross Aver-
age.

1st, That what was so condemned to Destruction, was in Consequence of a deliberate and voluntary Consultation, held between the Master and Men.

2dly, That the Ship was in Distress, and the sacrificing the Things they did was a necessary Procedure to save the rest. And

3dly,

3dly, That the saving of the Ship and Cargo was actually owing to the Means used with that sole View.

If the Ship, after having made Jettison, or cut away her Cables, Masts, &c. at one Place, is stranded at another, each concerned must bear his own Loss, or remain possessed of what is saved of his Property. For Instance: A Master bound for *Cadiz*, is obliged by a Storm in the *Downs* to cut away two Cables, and get to Sea; by which Means he cleared his Ship from the great Danger he was there exposed to; but he afterwards had the Misfortune to run his Ship ashore near *Plymouth*, where the major Part of his Cargo was saved. In this case the Owners of the Ship have no Right to demand that the Proprietors of the Goods saved shall contribute towards the Cables and Anchors left in the *Downs* notwithstanding the imminent Danger of losing the Ship on the *Goodwin Sands* (where there was no Probability that any Thing could be saved) which could only be guarded against by the Method taken of cutting away the two Cables. From hence it follows, that if nothing had been saved of the Cargo, and the Cables and Anchors had afterwards been recovered, they would remain the sole Property of the Owners of the Ship, at least till the Proprietors of the Goods had actually paid for, or contributed towards the Loss of those Cables, and Anchors. This is an old Law, and the Custom of many Places [*a*]. If a deep-loaden Ship be obliged to take out a Part of her Cargo, previous to her passing some Shoals or Flats, which without such Lightening hinder her getting to her destined Port, and the Lighters, or Boats in which the Goods of such Cargo are put, should perish, the Owners of the Goods that remain are to bear an equal Proportion of the Loss; but if the Ship should be lost, and the Lighters saved, the Owners of the Goods so preserved shall not only remain possessed of those Goods, but also shall contribute nothing towards the Loss of the Ship and what was in her. This Difference is founded on this; That lightening of the Ship was in consequence of a deliberate and voluntary Determination, and for the Good of the whole; whereas the Lighters being saved, and the Ship lost, was owing to an Accident, no ways proceeding from a Regard to the whole, but a Case similar to the saving Goods lying nearest at hand when a Ship is run ashore.

Let

Let us go still farther, and suppose, That a Ship running on a Bank throws overboard all her heavy Stores, and Part of her Cargo, by which Jettison she gets clear, and returns to Sea; yet proves so leaky, that she is obliged to make for, and take Shelter in the next Harbour, where upon Examination she is found in so bad a Condition, as not to be repaired, and therefore is condemned as unfit to proceed on the Voyage. In this Case, notwithstanding her Loss proceeds from her having been ashore, yet as she got clear by the aforesaid Jettison, and the Remainder of the Cargo escaped, and arrived safe in Harbour; that which was so saved, must contribute to the Loss of what was thrown overboard. But yet whatever Damage the Ship sustained by her running a-ground, or the Damage or Loss any particular Goods suffered by this unhappy Accident, must be borne by the Ship's Owners, and by the Owners of the Goods, without any Pretension of Indemnification from the Cargo saved; their Redress being only against the Insurers.

[a] Laws of *Wisby*, Art. 55.

Statutes of *Hamburg* in 1603, Tit. xvi. Art. 9.

Lex Mercatoria of *Malynes*, printed 1622, cap. 25.

Ordinance of *Antwerp* in 1563, N^o. 29.

Ordinance of *France* in 1681, N^o. 766, 767.

Ordinance of *Rotterdam* in 1721, N^o. 302.

§ 54. In the Collection intituled *Consolato del Mare*, which contains some old Laws of *Barcelona*, partly taken (as *Verwer* shews, Pages 54, 55.) from those of *Wisby*, it is said, cap. 94, "That in case of a Jettison, the Ship shall contribute for half of its Value: But (cap. 96.) if the Master receives Freight for his whole Cargo, the same shall be included in the general Contribution." For how much, or for what Value, the Ship is to contribute in case of a general Average.

In the Ordinance of *Philip II.* made at *Antwerp* 1563, (see N^o. 25.) it is said, "That the Owners of the Cargo shall have the Option to make the Ship contribute either for her real Value, or for her whole contracted Freight;" which, as *Verwer* affirms in his *Annotations* upon this Ordinance (Page 118.) hath been practised in the Northern Parts of *Holland* ever since the most antient of their own Sea Laws have been known, which are the Decrees, or Judgments of the City of *Dam*, or *Damme*, collected, according to the aforementioned Author's Con-

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Conjecture, before the Year 1300, and still in Use, as appears by the Ordinance of *Rotterdam*, N^o. 322.

By the *Recopilacion de Leyes de las Indias* in *Spain*, N^o. 80, and the Statutes of *Genoa*, N^o. 137, the Ship contributes both for the whole of her Value, and Freight. At *Leghorn* the Custom is, (as appears by *Case* 24, I.) That the Ship shall contribute for one Half of her Value, and one Third of her Freight.

By the Ordinance of *Lewis XIV.* in *France*, N^o. 579, both Ship and Freight are to contribute for one Half.

The Ordinance of *Coningsberg*, N^o. 855 to 861; of *Hamburgh*, N^o. 981; and of *Copenhagen*, N^o. 1284, all agree that the Ship is to contribute for the whole of her Value and Freight; which Value is well explained by the said Ordinance of *Hamburgh*, N^o. 982, which directs that the Value of the Ship shall be no other, than what she was really worth in the Condition she arrived: And that from the Freight a Deduction shall be made of the Mens Wages, Pilotage, and such other Charges, as are distinguished there by the Denomination of petty, ordinary, or common Average, of which it is customary every where for the Cargo to bear two Thirds, and the Ship one. The Difference of the Ordinances of several States in the Manner of settling the Ship's Contribution is easily reconciled, for it proceeds from the same Grounds, *viz.* The Impossibility of employing a Ship in any Voyage, without Wear and Tear, and consequently losing of that Value she had when she commenced it: and the Supposition that one Half, or one Third of her Freight, would be expended in paying Mens Wages, and other Charges. The abovementioned Law of *France*, that the Ship shall contribute for a Moiety of her Freight, as well as her Value, is to be understood only of the gross Freight (see *Case* 8, F. *Case* 9, G.) The Ordinance of *Coningsberg* mentioned above is defective both in this Point, and the Method of valuing the Vessel; and wants Explanation. The right and just Way of calculating is to be found in the last-named modern Ordinance of *Copenhagen*, which enacts that the neat Freight, and full Worth of the Ship (after making proper Allowances for what she is diminished in Value by the ordinary Course of the Voyage, and the extraordinary Accident that

that gave Occasion for the general Average) shall contribute their Share or Part in a general Average.

§ 55. The Sea Laws of Trading Countries differ greatly in fixing the Prices, at which Goods thrown overboard shall be made good, and for what Value those saved are to contribute. According to the old Laws in the *Consolato del Mare*, cap. 95; the Statutes of *Genoa*, lib. iv. cap. 17; (N^o. 148 in this Work) the Ordinance of *Rotterdam*, N^o. 325; of *Stockholm*, N^o. 1167; and of *Copenhagen*, N^o. 1285, if the Accident which occasioned the general Average happened before half the Voyage was performed, the Jettison is to be estimated at the Price it cost; but if after, then at the Price which the rest, or such like Goods shall be sold for, at the Place of Discharge; Freight, Duties, and ordinary Charges deducted. But the new Ordinance of *Amsterdam*, in 1744, (N^o. 527.) seems to differ something from this Custom, saying, That only in Cases of Detentions and Ransoms the Contributions shall be made in those two different Manners of Valuation. The Ordinance of *Antwerp* in 1563, by *Philip II.* N^o. 25; the *Recopilacion de las Leyes de Indias*, N^o. 80; the old Statutes of *Hamburg* of 1603, p. 2. tit. xvi. art. 2. the Ordinance of *Lewis XIV.* N^o. 753; and of *Coningsberg*, N^o. 860, all agree, That the Goods saved and lost shall be rated at the Market Price which those saved sell for; and a Contribution be made accordingly, after deducting Freight, and Charges. But the new Ordinance of *Hamburg* in 1731, N^o. 982, deviates from their former Statutes in this Particular, by ordaining that in Cases of general Average the Goods shall be estimated according to their Invoice, with the Addition of all Charges, except Premium of Insurance. Now this Difference naturally gives rise to the following Question, *viz.* Which is the justest Way, to reckon the Goods according to their Value at the Place they came from, or according to their Value at the Place where they are landed? In Answer, we think there is no manner of doubt, but that if the Ship arrived in Safety at her destined Port, both the Goods thrown over-board, and those delivered, ought to be valued at the Price they might have yielded, or did yield there, whether the Jettison was made before they came half the Way, or after: For if the Goods saved by this Jettison arrived at the Place they were destined for, and there produced double what they cost, it would be unreasonable

For how much, or at what Value, the Goods are to contribute, in case of a general Average.

that one half of such Produce should contribute nothing to what was cast away : nor would it, on the contrary, be reasonable to make the Goods saved (if they came to a losing Market) pay for more than they produced : or suppose they were such as had suffered by their own perishable Nature, what Reason could there be to make them contribute *ad valorem* of their Cost ? It appears by *Mahnes, Lex Mercatoria*, cap. 26, that this Distinction was likewise observed in *England* in 1622, the Time in which he wrote, of rating the Goods at prime Cost, if the Jettison happened before half the Voyage was performed ; and, if after, at the Price that the rest, or like Goods sold for, at the Place of Discharge. An Instance happened lately, wherein the Concerned agreed that the Goods saved, and those thrown overboard, should be rated at first Cost. See *Case 10, E.* As there is no Law in *England* that positively directs what Method is to be observed in these Cases, the Insurers, as well as the Insured, are bound by the Determination of Referees. (*Vide Case 8, O.*) It must here be noted, that the Insurers, by the express Words of most Policies, empower the Insured to sue, labour, and travel, in, and about the Defence, &c. of what they insure.

Molloy, in his Treatise *De jure maritimo*, remarks that in his Time the general Custom was, That the Goods saved, and those lost, should be estimated at the Rate which those saved were sold for, Freight and other necessary Charges deducted. And this, by what we have seen transacted in such Affairs, seems to be the prevailing Custom now in *England*.

Accidents may happen that may cause a Contribution before the Ship can reach her destined Port. When a Vessel has been obliged to make a Jettison, or by the Damages suffered soon after sailing is obliged to return from whence she came ; the necessary Charges of her Repairs, and the replacing the Goods thrown overboard, must be proportioned by a general Average. See *Case 12.* In like manner, when Ships are in Time of War detained in foreign Ports, and exposed to great Expences in procuring their Release ; there is no other Way of settling a Contribution for the Payment of those Charges, but on the first Cost of the Cargo. See *Case 36. U.* With regard to some Sorts of Goods that arrive whither they were bound after a Jettison, it may be less inconvenient for all the Concerned to settle,
and

and make a Repartition of the Loss upon the Cost of the whole Cargo, than to calculate upon a forced Sale, or an inaccurate Appraisement. And this we apprehend was the principal Reason why the Magistracy of *Hamburg* made their new Ordinance differ from the old one. However, none of these Rules are to be understood to be without Exception, or to want no Amendment; for though a Law may ordain that each Owner shall contribute proportionably to the Cost of his Goods; yet if he can prove that they were spoiled, or had fallen considerably in Value after shipping, it doth not seem equitable to compel him to any other Contribution than *pro rata* of what his Goods are worth at the Time of settling the Average. And this we apprehend induced the *States General* in their new Ordinance of Insurances at *Amsterdam* in 1744, N^o. 553, to insert the following Clause; "Whereas the Accidents from whence
" general Averages arise, are so variable in their Circumstances
" that no Ordinance can well provide for them all; the Decision of them shall be left to the Commissioners of the Chamber of Insurances, to regulate and determine according to
" Law, Reason, and Equity."

In a Codex of Commercial Laws enacted at *Bilboa*, anno 1738 (which is come too late to our Hands to be quoted in all the proper Places of this Essay) Chap. 21. treating in what Manner gross Averages are to be regulated, it is said, "That
" the major Part of the Concerned shall have it in their Choice
" to regulate the Value of the Goods by the Price appearing in
" the Invoices, or by what they shall be computed at by an
" Appraisement made conformable to their current Price at the
" designed Port, Regard being had to the Condition they come
" in, and their Quality; but that a Repartition of no Part of
" the Average shall be made on the Freight without the
" unanimous Consent of all the Concerned and the Captain."

Note, The Amount of a gross Average may now and then be so small, that the Concerned shall chuse rather to make it good as a single Average (that is one Third on the Ship, and two Thirds on the Freight) than to cause Appraisements to be made of all the Merchandizes, or to bring all the Invoices together.

For how
much, or at
what Value
Gold and Sil-
ver shall con-
tribute to a
general Ave-
rage.

§ 56. Gold and Silver at most Places contribute to a general Average according to their full Value, and in the same Manner as other Merchandize [a]: but at *Amsterdam* it has been a Custom from Time immemorial, and still continues, that Gold and Silver shall only contribute for half their Value, conformable to the ancient Law of *Wisby*, (*Art. 38. § 3.*) which says, that in Cases of Jettison, of two Pence which were aboard, only one shall contribute. In *Molloy, De Jure maritimo*, it is asserted, (*Cap. 6. § 4.*) "That in general Money, and even Jewels, "Cloaths, and all things in the Ship, (except a Man's Apparel in Use, or Victuals, &c. put on board to be spent) are liable to Average and Contribution;" and *Seet. 14.* "That a Master, or Purser shall contribute for the Preservation thereof; also the Passengers for such Things as they have in the Ship, be they precious Stones, Pearls, or the like; and Passengers that have no Goods in the Ship, yet in regard they are a Burthen to her, an Estimate is to be made of their Apparel, Rings, and Jewels, towards a Contribution for the Loss." In which Assertion we apprehend he has enlarged upon *Malynes* from what he found in the Annotations of some foreign Authors on the *Rhodian Laws*, which he says were introduced into *England* by *William the Conqueror*, and *Henry the First*, though we suppose he never knew them to have been exactly followed at *London*: at least in our Time we do not remember ever to have met with any Regulation of a general Average, where the Apparel and Jewels of Passengers were brought into the Contribution, as it is a common Rule, that what pays no Freight, pays no Average. The Senator *Langenbeck*, quotes (*Page 178.*) an old Law of *Lubeck*, which says, That if any Goods should happen to be thrown over-board, which the Master, out of Friendship to their Owner, carried Freight-free, he shall not be answerable for their Loss. He also (in the Introduction to his Book) cites a Law, made by the City of *Hamburg* before 1276, which says; If a Person carries any Money with him in the Ship, and declares to the Master his Indifference about any Jettison, and that his Cash shall sink or swim with him; he shall not be obliged to contribute for it, towards any thing that may be thrown over-board. But in the revised Statutes of that City, of 1603, in the Chapter of Jettisons, *Art. 3.* it is said; If any Person carries either Money, Pearls, or Jewels with him in the Ship, and a Jettison happens to be made, whe-

whether he discover it, or no, he shall contribute to the Loss, equally with others who have Goods in her: But, as the said *Langenbeck* very justly observes in his Remarks on this Article, how can it be discovered, if the Person will conceal it? It is now a Custom for Passengers to stipulate to pay a certain Sum for their Passage, Diet, and Carriage or Freight of their Baggage: The Master never enquires on these Occasions whether their Wearing Apparel be of much, or little Value, nor what Rings, Watches, or Money they have about them [b], so that he is not responsible for any of them: but we are of Opinion, that for what Passage Money the Master receives, he is to contribute; tho' the Ordinance of *Copenhagen*, N^o. 1284, declares that Passage Money shall have the same Exemption as Sailors Wages. Upon the whole, no Passenger ought to conceal from the Master such Things as he would not carry without a valuable Consideration, if he knew of them. For Instance: In Voyages from *Cadiz* and *Lisbon*, where the Carriage of Gold and Silver makes a great Part of the Ship's Profit, or Freight, if a Person, under the Cloak of going Passenger, should conceal, either in his Trunks, or about his Body, any such considerable Sum of Money, or Jewels, as would not be suffered without paying a Freight; he must, when discovered, not only satisfy the Freight, but also contribute to any Jettison. It is customary in *London*, and most other Countries, for the Proprietors of whatever Gold, Silver, or Jewels pay Freight in Merchant-Ships, to contribute to a Jettison for their full Value: For, the Masters being obliged, by all Sea Laws, to throw out, in Case of Need, what is heaviest, and of least Value [b], and the Worth of such precious Commodities being known, the Care of them will be encreased in Proportion to their Worth, to prevent their being thrown over-board promiscuously with other Things: and hence their Preservation redounds to the common Benefit. There is a Difference nevertheless when these rich Wares come by King's Ships, or Packet Boats, as such Vessels never pay nor receive any Average; see *Case 10. E.* The Reason is, in Goods belonging to his Majesty all his Subjects in general are concerned, wherefore for any particular Loss of them no particular Contribution is necessary, because it is supplied by the general Contribution of the whole Community.

And

As every Charter-Party made with the *East-India* Company, has the Condition inserted, That the Freighters shall not be obliged to make good any Damage that the Ships may suffer; so it is reasonable to apprehend, that whatever Silver is sent out, or Gold, and Diamonds brought home, on Account of private Persons, shall also be free from any Sort of Contribution towards a general Average.

[a] The Ordinance of *Rotterdam*, N^o. 318, says, that in the general Average, not only the principal Cargo, but also the Cloaths, Gold, Silver, and Jewels sent on board in Trunks, are included. The Ordinance of *Coningberg*, N^o. 858, directs, that Jewels, Rings, Pearls, Money, wrought Plate, and even Provisions, and Ammunition (which are in most Places exempted) shall contribute; but speaks nothing of Passengers Cloaths.

[b] The Ordinance of *Antwerp*, N^o. 26, says, Coin shall be estimated, and pay according to its intrinsic Value; but whatever any Person ordinarily carries about him (except Bags of Jewels, Gold or Silver) shall not contribute in an Average.

Particulars
that are ad-
mitted into
general or
gross Ave-
rages.

§ 57. All extraordinary Charges, proceeding from Endeavours to preserve the Ship, and Cargo, and the Damages resulting from the Measures taken for that Purpose, constitute, and are commonly accounted, a general, or gross Average, as the Ordinance of *Hamburg* explains it, N^o. 981; of which Expences, and Damages, that Ordinance (N^o. 983.) particularly enumerates,

1. All Damage that a Ship suffers in her Apparel, and Cargo, in defending her against an Enemy, Privateer, or Pirate.

2. Extraordinary Pilotage, and Charges which a Ship shall be at, on springing a Leak, or being obliged to take Shelter in a Harbour, by having received some other Damage.

3. The necessary Expences for Assistance to get clear, when a Ship is run aground, or the Charges of lightening her on such Occasions.

4. Whatever a Master may have agreed to pay for the Ransom of his Ship, and Cargo, to any Privateer, or Pirate, when taken.

5. What may be expended in the Cure, and extraordinary Attendance on either Officers, or Sailors, wounded in Defence of the Ship; and also what Rewards may be promised by Articles to the Widows and Children of those who may unfortunately lose their Lives in the Engagement.

6. The

6. The extraordinary Gratuity which a Master may have promised his Men, to animate them to a stout Defence, or Salvage of the Vessel.

7. All Masts, Cables, and Rigging, either split, cut, or carried away; and all Sails, or other Appurtenances, torn, or spoilt, in order to save the Ship.

8. All that is thrown over-board, or damaged by a Jettison for the Ship's Safety.

9. The Value of any Goods, or Stores, taken away, or plundered by Privateers, or other commissioned Ships, with a Promise to pay for them.

10. Charges occasioned by any extraordinary Quarantine, and other unavoidable Accidents.

And, by the Ordinance of Copenhagen, N^o. 1275,

11. Whatever Holes are cut in a Ship, in order to have the Water run out, or conveyed to the Pumps, when by shipping a Sea, she is filled.

12. The Ship's Boat, if cut away from its Fastenings, and set adrift.

13. The Expence of getting a Ship afloat, after running ashore, and that of repairing the damaged Works under Water.

14. Goods lost by being put into any other Vessel, or Lighter, and there perished, when otherwise they must have been thrown over-board.

By the same, N^o. 1276,

15. The Charges which a Master pays for bringing his Ship to a Place of Safety, on being chased by an Enemy; or if she lay in a dangerous Part, waiting for a fair Wind, or Convoy.

By Langenbeck's Annotations, Page 198,

16. The Charges of Lawyers, Attorneys, and Proctors, for reclaiming Ship, and Cargo.

17. Travelling Expences of Persons concerned in the Solicitation of it.

18. Gratuities given on such Occasions.

19. Protests.

20. Tavern Expences at Meetings about it.

21. Postage for Correspondencies.

22. Commissions to Merchants or Factors, who have the Direction and Care of it.

23. Brokerage.

24. Charges.

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24. Charges for the Hire of Anchors, Cables, &c.
25. Lighterage for the unloading, and Demorage.
26. Horse, Cart, and Waggon Hire; when Goods are carried over Land.
27. Gratuities to Lords of Manors, and Proprietors of Lands, for Leave to dig a Ship off, that is drove ashore above High Water Mark, either by a Storm or Tide, as happened in 1703, near *Gluckſtat*; and the Charges in performing it.
28. Cost of Repairs, to Carpenters, Block-makers, Sail-makers, Smiths, &c.
29. Charges of laying in fresh Ballast.
30. Rewards promised to the Sailors more than their Wages, for extraordinary Labour for the Ship's Preservation.
31. Interest, Premium of Insurance, and Commission on Monies disbursed.
32. Charges of victualling, and guarding the Ship during her Detention.
33. Cost of inspecting Custom-house Registers, to find out who may be concerned, or Proprietors.

By Case 5.

34. Charges (in *Roman Catholick* Countries) of carrying the Holy Virgin home, and offering Thanks.
35. Charges of sending Advice-Boats from distant Places.

By Case 13.

36. For Surgeons, and Physicians Fees, for attending those that became sick, or were wounded, in their Endeavours for the Preservation of the Ship and Cargo.
37. For Appraisers, and for the Attendance of Notaries, and Magistrates.

By Case 27.

38. For Entrance into *Dover* Pier; Detention there for several Tides; King's Surveyors; Custom-house Officers; Light Money, &c. In short, whatever Charges may occur for the joint Interest of the Concerned in Ship and Cargo, which can hardly be all enumerated; and of those already mentioned some are not common to all Cases: It would therefore require a very nice Examination, and Scrutiny, to admit them absolutely as laid down, in general Averages. When in the

Ham-

Hamburg Ordinance, N^o. 983, it is said; That Charges occurring by any extraordinary Quarantine, or unavoidable Accidents, shall be brought into a general Average; it must only be understood of such extraordinary Charges, as accrued from a voluntary Endeavour for the better Security both of Ship and Cargo; but not, as in the same Ordinance, N^o. 901, is justly distinguished, for Sailors Victuals and Wages when they are under a Necessity of performing Quarantine with the Ship, in which case the Master would have been obliged to maintain and pay them though his Vessel had arrived only in Ballast. This is very different from a Detention by foreign Powers, who in War Time seize Ships at Sea, and carry them into their Ports to search for an Enemy's Property; when the continued Employment of the Seamen is with the sole View of being enabled to prosecute the Voyage immediately on the Ship's being cleared*. Mr. *Langenbeck* very judiciously enlarges the Distinction, by observing, that when a Ship is accidentally surprized and frozen up by a Frost's setting in at *Petersburgh* sooner than expected, Sailors Wages and Victualling for the Time she is frozen up are not to be made good by a general Average, but are to be borne by the Ship alone. But, in our Opinion, the Mariners extraordinary Labour of cutting the Ice away from the Vessel, Day after Day, either to ease, or get her out, as it is for the common Benefit, ought to be allowed in a general Average. If a Ship after sailing from that City should suffer so much Damage in a Storm, as that the seeking a proper Place to repair becomes absolutely necessary, and the Master being convinced that *Petersburgh* is so, determines to return thither, where he is afterwards frozen up; in such Case, the Expence of Victuals, and Wages, should be admitted in a general Average. The *Copenhagen* Ordinance (N^o. 13.) says, That the Repairs of the Damage a Ship receives under Water by running ashore, are to be brought into a general Average. This we apprehend to be wrongly explained, inasmuch as the Ship ought to bear her accidental particular Damages, as well under, as above, Water. The Instance (N^o. 27 to 52) quoted by *Langenbeck*, seems to determine, that whatever shall be given to the Lord of a Manor, or a Proprietor of Land, for Leave to dig a Ship out, that has

* Which has been allowed to be general Average, as well in *London* as elsewhere.

been driven ashore, shall be brought into a general Average: for though it may seem that these Charges belong to the Ship alone, as the Goods might have been unloaded without digging, it is nevertheless but reasonable that the Cargo should contribute, since whilst *that*, and the Ship, were kept entire and together, guarded and defended, the Lord could not pretend to demand any Part of it; as he might had it been a Wreck: so that it was for the Benefit of both, to preserve them together, and compound for the whole.

As to Detentions by a sovereign Power, a Distinction is to be made; for if a Ship be embargo'd for the Service of the Potentate, in whose Port she is (which all Princes have a Right to do) and a Proposal be made for paying by way of Hire, or otherwise, for such Detention; whether that Prince pay, or not, for the Time he detains her, she ought to bear her own Charges of Mens Victualling and Wages. The Ordinance of *Sweden*, N^o. 1062, and of *Denmark*, N^o. 1271, go too far in this Point against the Insurers, by directing, "That when a Ship is detained by any Sovereign, or by an Embargo laid upon her, the Insurers shall make good the extraordinary Charges, and Days of Demorage:" This we apprehend should only be in case her Embargo was an Act of War, or the Consequence of a Difference between the Prince whose Colours she bore, and him that detained her; but not when the Detention is only to employ her in his Service for transporting Troops, &c. of which the Crown of *Spain* has afforded many Instances, and has generally paid tolerably well for such Service, though sometimes not so much as many Masters thought they had a Right to demand.

In the last War between *England* and *Spain*, a Fleet of Merchant Ships from *Carthagena*, and *La Vera Cruz*, were detained by Order of the *Spanish* Court, above a Year at the *Havanna*, to wait the Arrival of a sufficient Force to convoy them home: Notwithstanding the Expence of maintaining a Ship's Crew there runs very high, yet the Owners of the Ships in *Spain* had no Recourse against any of their Insurers, nor against the Proprietors of the Cargoes; for they considered it as an accidental Occurrence, or mere Chance, that regarded the Profit, or the Loss of the Undertaking, wherewith the Insurers had nothing to do. *Verwer*, in examining the Question, whether such
a Deten-

a Detention by a foreign Power ought to be brought into a general Average, or not; very properly replies, by proposing another Query; Why should Victualling and Mens Wages be deemed a general Average, rather than Interest of Money, and the Damage caused to Goods by such a Delay?

On the Detention of foreign Ships in *England*, during the last War, when it was every where justly allowed, that Demorage should be satisfied by way of general Average, the Masters in their Demands strenuously insisted on having something allowed for Wear and Tear: but this was rightly rejected, and the bare Wages, and victualling the Men, only admitted; because this Sort of Demorage is quite different from that which is daily stipulated to be paid, on chartering or freighting a Vessel, when not only the Mens Victuals and Pay are considered, but also an Interest for the Owners Capital, or what the Ship stands them in, and the Detriment she suffers by lying so much longer, than was at first agreed on.

The Ordinance of *Coningsberg* (N^o. 824, 825) says, " That when Goods contracted for are sent on board in Lighters, the Communion between those Goods, the Lading already on board, and the Ship, commences from the Moment of their being put into the Lighter; and (N^o. 853.) that in case any Loss or Damage happen to the Goods in the Lighter, if no Satisfaction can be obtained from the Owner of the Lighter, it shall be made good as a gross Average, by the Ship and Cargo, although it should not have all the legal Properties that are required for a gross Average." But this is inconsistent with Reason, and contrary to the Custom of all other Places.

§ 58. The fixing of the right Sum, on which a general Average ought to be computed, can only be done by examining, what the whole Ship, Freight, and Cargo, if no Jettison had been made, would have produced neat, if they had all belonged to one Person, and been sold for ready Money. And this is the Sum, whereon the Repartition ought to be made; all the particular Goods bearing their neat Proportion, neither more, or less. As for Instance:

A Ship bound from *Cadiz* to *Hamburg*, the Cargo of which consisted of 400 Pipes of Oil, and 100 Butts of Wine, meeting with bad Weather in her Passage, threw overboard 100 Pipes of Oil, with all her Guns. Her Value being examined by Men

The Manner of finding out the true Total or Sum, whereon the Repartition of a general Average is to be made.

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of Experience upon Oath was found to be, in the Condition she arrived, and that she might sell for - *Mk.* 10000

The Guns thrown overboard esteemed worth 1000

So that the Ship's Value, if she had made no Jettison, would have been - 11000

Suppose 400 Pipes of Oil, deducting 5 *per Cent.*

for Leakage (there remain 380) sold

at the Market Price of 50 *Rlr.* ready

Money, is - 57000

Deduct for Customs and other Charges 5

M. each Pipe - 1900

55100

100 Butts of Wine, after deducting Leak-

age as above, there remain 95, which

at *Rlr.* 60 is - *M.* 17100

Customs, &c. at 8 *M.* - 760

16340

The Sum total is - *Mk.* 82440

So that if the Ship and Cargo had arrived without making any Jettison, and had been sold for the Account of one Person, they would together have yielded neat *Mk.* 82440.

Now we will suppose the Ship for one Man's Account, the Oil for another, and the Wine for a third, then

A, Owner of the Ship, must contribute

for the Ship's Value on Arrival *Mk.* 10000

For the Guns thrown overboard 1000

For Freight of 400 Pipes of Oil at 50 *M.* *per* Last - *Mk.* 5000

For Freight of 100 Butts of Wine at 60 *M.* - 1500

6500

Deduct for three Months Wages, to be paid the Sailors. - 1500

5000

16000

B, The

B, The Mens Wages in strict Justice ought to contribute for	-	-	M. 1500
C, Owner of the Oil for	-	M. 55100	
Deduct for the Freight, &c.	-	5000	
			<u>50100</u>
D, Owner of the Wine	-	M. 16340	
Deduct for the Freight	-	1500	
			<u>14840</u>

is as above - M. 82440

But as both Law and Custom have declared that
Seamens Wages shall not contribute, we de-
duct the - - - 1500

And so it is clear that the Jettison is to be borne
by the Sum of - - - M. 80940

The Jettison, being 100 Pipes of Oil, is M. 13778
The Guns - 1000

14778, which ac-
cording to the Custom introduced will thus contribute;

1. The Ship for	M. 11000	M. 2007 : 15	
The neat Freight	5000	912 : 11	
			<u>M. 2920 : 10</u>
2. The Owner of the Oil	50100	-	9145 : 7
3. Ditto of the Wine	14840	-	2708 : 15
	<u>80940</u>		<u>14775</u>

which Custom is certainly wrong, and to the Prejudice of the
Proprietors of the Goods; by making them alone bear the Bur-
then of the Sailors Non-contribution: For the Reason why
both Law and Custom excuse Sailors from contributing, can
have been no other, than to engage them the readier to consent
to a Jettison, and not expose themselves too much, and thereby
risk the Whole; which a Share in the Loss might lead them
to do: And as this equally tends to the saving of the Ship
and Cargo, each ought to bear a suitable Proportion of these
1500 M. as follows:

For

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As 82440 M. is	{ 11000 }	for the Ship's Share to M. 318 : 6
to 1500, so is	{ 6500 }	
and	50100	for the Oil - 911 : 7
and	14840	for the Wine - 270 : 3
	82440	1500

So that from M. 17500, the Value of the Ship, Guns, and Freight, deducting 318 : 6. as above the Ship should contribute in Justice and Equity - - on 17181 : 10 for M. 3136 : 5

from	{ the Pro- ceeds of the Oils deduct }	911 : 7	{ the Oils should contri- bute }	on 49188 : 9 for	8979 : 2
M. 50100					
from	{ the Pro- ceed of the Wine deduct }	270 : 3	{ the Wine should contri- bute }	on 14569 : 13 for	2659 : 9
M. 14840					
				M. 80940	M. 14775

On this Article relating to Seamen's Wages we must further add, that only so much of those Wages ought to be deducted from the Freight, as may be due from the Time of their beginning to load, till their Arrival : For if any remained due to them on Account of their outward-bound Voyage, it was a Debt owing to them by the Owners of the Ship, and must have been paid by those Owners if the Ship had been lost in coming home. Moreover if the Master hath advanced any Thing to his Crew, in Part of their Wages for the Voyage home, it should be reckoned as if it had not been paid : for the Sea-Risk of advancing Money to the Sailors shall be for the Master's Account, provided he benefits himself by it, either in the Reduction of one Coin to another, or by retaining something out of it : but if he acquaint his Owners with the Transaction, and the Advantage be for them, the Risk is for their Account.

What Particulars belong to petty, or accustomary Average, to be borne one Third by the Ship, and two

§ 59. To the petty, or accustomary Average (of which one Third is borne by the Ship, and two Thirds by the Cargo) belong Lodemanage, Towage, and Pilotage ; to which the Ordinance of *France*, N^o. 744, adds Light-money, Beaconage, Bridge, Toll, Quarantine, and River Charges, Signals, Instructions, Passage Money by Castles ; Expences for digging a Ship

Ship out of the Ice, when frozen up; but the Insurers have no-thing to contribute hereto, as is very well explained in the Ordinance of *Stockholm*, N^o. 1122. At *London* by Custom; *Dover* Pier. At *Cadiz*, the Health-Visits, and Examinations into the Contents of the Ship's Cargo, called there *el Fondeo*, or searching to the Bottom of the Ship's Hold. In Lieu of all which different petty Port Charges, it is usual at some Places to pay 5 per Cent. calculated on the Freight, and 5 per Cent. more for Primage to the Captain.

§ 60. By the Ordinance of *France*, N^o. 738. the extraordinary Charges for the Ship alone, or for the Goods alone, and the Damages befalling each in particular, shall be a simple, and particular Average, which the Insurers are to make good, in Proportion to the Sums they have underwrote, and received a Premium for. This we have considered in several Lights, and endeavoured to clear up, in the foregoing Sections, from 32, to 41.

§ 61. Ever since the Year 1749, it has been the Custom in *England*, as it was before in most other Countries, as mentioned in §. 14. [a] that no particular Average shall be paid by the Insurers, under 3 per Cent. even general Averages are not paid at *Hamburgh*, if the Damage be less than that; but in *London* those Averages that are general, are satisfied, be they ever so small. We must here remark that almost all Ordinances seem deficient in not fully explaining when, and after what Manner, the Damage shall be deemed to exceed 3 per Cent. We shall, to elucidate this Matter, descend to particular Circumstances: If in a Chest containing one hundred Pieces of Linen, three are deducted for Damage, and as such allowed to the Buyer; the Loss ought to be recoverable from the Insurers, whether that Chest was in a Policy by itself, or amongst a Parcel of an hundred Chests: For why should not a Person, who has insured and paid an equal Premium for an hundred Chests, have the same Advantage as he that is insured but for one? Suppose a Merchant has shipped 101 Chests of Goods, N^o. 1 to 101; of which, on Arrival, three Chests are by Sea or other Accident so spoiled, as to be worth nothing; if the Damage be calculated as on the whole Value of 101 Chests, it will not exceed 3 per Cent. and is by most Insurers thought not to be recoverable by the Insured, especially if the Insurance be made without expressly declaring in the Policy the particular

Thirds by the Cargo.

The simple, or particular Average to be made good by the Insurers.

No simple, or particular Averages under 3 per Cent. are paid by the Insurers.

particular Sum insured on each Chest. We cannot help thinking, however, that if such a Case came to be rightly explained to a Jury of Merchants, the Insurers would be condemned to pay the Value of these three Chests, in the same Manner as they would, if it had been expressed how much was insured on each Chest, or as if the 101 Chests had been insured in five different, and distinct Policies.

As for Example. N^o. 1 to 20, in one Policy.

21 to 40, in a Second.

41 to 60, in a Third.

61 to 80, in a Fourth.

and 81 to 101 in a Fifth.

The Insurers in this Case, supposing a Loss or Damage of one Chest, of the Goods specified in each of the three first Policies, must unquestionably have paid the Average, which would have amounted to 5 *per Cent.* because the Loss of a Chest would have been one in twenty: And farther it might be considered as quite a different Thing to find whole Chests spoiled. The Law, or Custom, by which the Insurers are not obliged to pay any particular Average under 3 *per Cent.* was probably established in order to free them from the Vexation of being called upon for every trifling Damage that might happen to a few Pieces in a Chest or Bale. We are of Opinion, that notwithstanding an Insurance is made under the general Name of Merchandises, at least each different Parcel or Kind of Goods ought to be considered by itself, and the Insurers made liable for what Damage exceeds 3 *per Cent.* in such a Parcel. However as we have as yet no settled Rules in this Point, the best Way is to set Matters out of Dispute, by Explications in the Policy; and no reasonable Insurer ought to object to any Division, or fixing particular Values on Parcels of Bale Goods. If a Person ships 1000 Pieces of Long-ells divided into 50 Bales of 20 Pieces, each Piece worth 1 *l.* he may say 1000 *l.* on 50 Bales at 20 *l.* per Bale, and then the Insurer will be liable for 3 *per Cent.* Damage on each Bale. But no Insurer ought to admit any Division in the Value of Goods of another Nature; such as Sugar, Hemp, Oil, where the Exemption of 5 or 10 *per Cent.* Average is from other Considerations.

[a] *Amsterdam*, N^o. 545. *Hamburgh*, 981. *Stockholm*, 1124. *Copenhagen*, 1274.

§ 62. The Insurers are liable for all Damages, and Charges, proceeding from any Capture, Detention, or Reprisal, except it can be proved that the Insurer designedly concealed Circumstances from them, which he knew might expose the Ship to such Accidents, and therefore would not declare them, to avoid giving more than a common Premium: But whatever contraband Goods may have been clandestinely shipped by other People, unknown to the Insured; and the Vessel thereby exposed to a Capture or Detention; cannot in any shape prejudice his Insurance, unless the Insured stipulated that the Underwriters should be free of Captures. In the last War seldom any other Declaration was made, but that the Insured's Interest consisted in neutral Property, and not in any contraband Goods; yet the Variety of Circumstances which occurred will not easily be forgot, as hardly any one of the general Ships passed free, without great Charges. See *Case 27, B. C. Case 36, S.*

§ 63. In *London* and *Antwerp*, as *Stracca* mentions in a Treatise he wrote upon Insurance; and as it is expressed in an *Ancona* Policy of the Year 1567; the Insurers were, even so early as then obliged to answer for the Barretry of the Master. And a Policy of *Florence* of 1523, N^o. 11. also comprehends the Risk "*di Barratteria di Padrone, e di Contrebanda di Veneziani, salvo di Stiva e Dogana*, to be for the Insurer. The new *Stockholm* Ordinance of 1750, N^o. 1067. declares, "That the Insurers shall also be answerable for all the Damages that may happen to the Ship and Goods, through Negligence or Knavery of the Master and his Crew, of whatever Kind they be, and that they may seek their Redress against the Master." But this Ordinance makes a Distinction; for in case any Goods should be missing or lost, for which a Bill of Lading has been signed; the Insured shall first have Recourse against the Master's Person and Estate, and, for what falls short in these, against the Ship, and Freight: But if all is not sufficient, he then has a Right to sue the Insurers for the Deficiency. In the Ordinance of *Rotterdam*, Art. 43. a remarkable Distinction is made between a Master chosen by the Owners, and one who accidentally becomes so: It says (N^o. 251.) That it shall not be lawful for the Owners of a Ship to insure against the Barretry of the Master appointed by themselves, but they may against the Disobedience and Roguery of his Crew. It is our Opinion that the Insurers

In what Cases the Insurers are liable for Damages resulting from Captures, Detentions, or Reprisals.

The Insurers must pay for the Faults and Thefts of the Master and Crew.

are not answerable for small Pilferings, bad Stowage, or extraordinary Leakage, proceeding from bad Casks: And also that when Insurances are made on Ships, and Effects, that are within the Dominions, where the Persons, for whose Account they are, reside; they must first procure Justice to be done them at home, before they have a Right of Claim against their Insurers abroad, or at least they ought to bring Proofs of having used their Endeavours to effect it.

What Damages the Insurers are to pay on Ship, and Goods, in Case of stranding.

§ 64. When a Ship is stranded, the Insurers upon the Cargo are bound to make good all that is damaged, stolen, or lost; and to pay all Charges occasioned by saving the Goods, even though those Charges should amount to more, than what the Salvage produces: And the Insurers upon the Ship are obliged to pay the whole, or whatever is lost, or damaged, belonging to her; and if she is got off again, all the Cost, or Expence of saving, repairing, and putting her in the same good Condition she was in before her Misfortune.

What ought to be saved first in Case of Stranding or Shipwreck.

§ 65. It is natural and just for People suffering Shipwreck, to endeavour first to preserve their own Lives; which when once done, their next Care should be, how best to keep what has not perished, from being pilfered or stolen; and that what is most valuable may first be saved. To prevent Seamen from making the Saving of their own Chests and Goods their greatest Care, and to encourage them to preserve all they can when a Vessel is wrecked; it is by some Sea Laws enacted, that not only their Wages due when the Misfortune happened, shall be paid, but moreover something for their extraordinary Labour [a]. If without Leave from the Master, who offers to maintain them, they immediately abandon the Place where the Ship stranded, whilst there are Hopes of Salvage, no Wages should be paid them from the Produce of what is saved without their Help. When Accidents of this Nature happen on a sudden, People are apt in their Surprise to lay hold of the Things nearest to them, without remembering, or considering that they have others of much greater Value under their Care; therefore it has been often agreed with Masters of Vessels, on the shipping of Diamonds, and so expressed in the Bill of Loading, that he should always carry them about him, and save them if he himself landed safe. By the Ordinances of *Spain* it is enacted, that Gold and Silver shall be lodged at a certain Place near the Main-mast, so that it may

may always be easily come at, and that in Case of Shipwreck those Specie shall first be saved: Sometimes it luckily happens that a Person has Chests or Bags of those precious Metals nearest at hand, and on that Account they are the only ones saved. Persons who are concerned, and on the Spot, may, previous to their knowing who shall be most fortunate, agree among themselves to bring all that is saved into an Average. We remember that in the Year 1727, the Ship called *Nuestra Senora delas Angustias*, having on board 144 Chests, containing 432000 Dollars in Silver for Account of Sundries, and 443 Surrons of Cochineal (of which 120 were entirely for the Master's Account) met with such bad Weather in her Passage from *La Vera Cruz*, that she became very leaky, insomuch that it was with great Difficulty her Crew could keep her above Water, tho' they incessantly laboured at the Pumps, Day and Night. After great Danger, and Fatigue, they arrived at the *Island-Flores*, where there is no Ground to anchor, or whereon to run ashore: The Master and Men determined to save themselves, with what Money and Goods they could, before she sunk; and accordingly with only the Ship's Launch and Boat, and three or four small fishing Boats, they first carried all the People ashore, and then took out the Silver. Just as they had unloaded it all, the Ship sunk where the Depth is not to be fathomed, and with her all the Cochineal and Goods belonging to the Master, and to others. When he arrived at *Cadix*, with the Silver saved, the Master demanded of the Proprietors of the Silver, for his having preferred the Salvage of their Property to his own, to share with them on an Average. Tho' his Allegations seemed founded on Reason yet he lost his Suit at *Madrid*, where the King's Council very justly argued; that as by his Majesty's Ordinance the Silver was first to be saved, the Master was thereto obliged, preferably to the saving of his own Property; and consequently had only done his Duty, and could not claim any thing for so doing.

[a] The *Wisby Law*, says (*Art. XV.*) that the Mariners are obliged to exert the utmost of their Power to save, and preserve the Merchandize; and for so doing, ought to be paid their Wages; but not, if they neglect to do it. The Laws of *Oleron*, said to have been introduced in *England* by *Henry I.* *Art. 3.* say, that if a Vessel happen to be cast away in any Place whatsoever, the Mariners shall be obliged to use their best Endeavours for saving as much of the Ship, and Cargo, as they can, and the Master shall allow them

them a reasonable Consideration to carry them home to their own Country; but if they have not endeavoured at such Salvage, the Master shall not be bound to provide for them in any Manner, but ought to keep them in safe Custody, until he know the Pleasure of his Owners.

The Ordinance of *Antwerp*, of *Phil. II. N^o. 31.* says, that the Ship's Crew are in Duty bound to assist the Master, to the best and utmost of their Power, in saving the Cargo; and when they have so done, they shall be paid their Wages at that Place (but otherwise not) and a reasonable Salvage also be given them.

How the
Damage is to
be borne,
when two
Ships run
foul of one
another.

§ 66. Most modern Marine Laws ordain, that when two Ships no ways wilfully, but accidentally, run foul of each other, they shall equally bear the Loss, or Damage which ensues; but if the Moiety of the Damage done to one of them should exceed the Value of what the other can make good, no Claim shall extend farther than the Produce of the whole: So that the Owners, by giving up what was theirs, are freed from any farther Demands [*a*]. The Custom of equally dividing the Damage happening by such Accidents on each Ship, was not heretofore general; for in some Parts an Estimation of both Ships and Cargoes was made, and each bore of the Damage in Proportion to their Value. In the 68th Article of the Laws of *Wisby*, it is thus expressed: "If it happen that by Ships running foul of each other, one of them with her Cargo be lost; the Goods of both Ships shall be appraised, and what is lost be rated at so much in the Pound, on the Value of what each had in; and the same Poundage shall be calculated on the Worth of the Ships." *Molloy, De Jure maritimo, Lib. ii. Cap. 6. § 10.* says, if two Ships happen to encounter, and cross each other, and the Crew swear their Innocency, Contribution must be made by a just Equality; but if one perish, as there can be no proportioning the Loss, so no Contribution. The *French Ordinance of Lewis XIV, N^o. 746.* says, "In case Ships run against one another, the Damage shall be equally borne by both Parties, whether during the Voyage, in a Road, or Harbour;" but by *N^o. 747.* "If the Damage be occasioned by the Fault or Neglect of either of the Masters, it shall be repaired by him who was the Cause of it." Tho' the Ordinance directs that the Damage shall be equally sustained by those that have suffered, and those that did it; yet it does not enact, that each Ship shall bear the half of such Damage. To be more particular, and to give our Sentiments in this Point: Suppose the Ship that sinks by running foul

foul of the other, to be worth	-	-	Rlr. 10000
And the other to be valued at	-	-	2000
			Rlr. 12000

We think the Loss will be equally sustained if the Owners of the Ship and Cargo saved, valued at Rlr. 2000, pay to those of the Ship and Cargo lost, worth Rlr. 10000, the Sum of Rlr. 1666 $\frac{2}{3}$, for as Rlr. 12000, the whole Valuation, is to Rlr. 10000 lost, so is Rlr. 2000 to Rlr. 1666 $\frac{2}{3}$ as above. Or if the Ship sunk was in Value Rlr. 2000, and the Ship preserved 10000, then the Owners of the Ship, and Cargo, worth Rlr. 10000, should pay to those of the Ship and Cargo of Rlr. 2000 sunk, Rlr. 1666 $\frac{2}{3}$.

Or if the Repairs of one of the Ships damaged should cost	-	-	-	-	-	Rlr. 500
And the other	-	-	-	-	-	1000
						1500

We think it is a just Equality to make the Ship and Cargo worth Rlr. 10000 bear to the Amount of	-	1250
And the Ship and Cargo, worth Rlr. 2000	-	250
		1500

In which general Doctrine, as also in the Manner how to reckon the Value, we differ from the Opinion of the much esteemed, and often quoted *Verwer* of *Amsterdam*, who says (*Page 121.*) that the Ship is to be rated according to her Worth at the Time of receiving the Damage, exclusive of Provisions and Freight; and the Cargo to be rated at its first Cost, with all Charges till on board: Nor does he make any Distinction whether the Accident happened when the Vessel had performed half of her Voyage, or more. We esteem it juster, not only that a Distinction should be made in the Circumstances wherein the Misfortune happened; whether between Ships outward, or homeward-bound; in a Port, or at Sea; but likewise that Regard should be had to the Place where the Sufferers come to make a Demand against each other for Damages. To illustrate this Assertion; let us suppose a Ship from *Leghorn*, sailing up the *Elbe* for *Hamburg*,

Hamburgh, runs foul of a Vessel coming down, bound to *Cadiz*; the Damage done to her obliges her to return to *Hamburgh*, in order to be repaired; and for these Repairs a Demand on the *Leghorn* Ship is made at *Hamburgh*. In this Case the Contribution should undoubtedly be calculated on what the *Leghorn* Ship and Cargo would yield neat there, and not on the Cost in *Italy*; but the *Cadiz* Ship cannot contribute for more than the Cost of the Goods at *Hamburgh*, with all Charges on board. Let us farther examine how this Damage ought to be divided between the Concerned in each Ship, in particular. We will suppose that the Ship bound for *Cadiz* had sunk: Her Value with what the Cargo cost at *Hamburgh* only, amounted to *Rlr.* 2000, and the *Leghorn* Ship with the neat Import of her Cargo *Rlr.* 10000. We therefore maintain that the 1666 $\frac{2}{3}$ Rix-dollars which the *Leghorn* Ship must pay for Contribution, ought to be distributed among the Concerned in the 10000 *Rl.* in the following Manner, *viz.*

1. The Ship for her Value in the Condition she arrived, or for what she would have sold for at <i>Hamburgh</i> , which we will suppose to be	-	<i>Rl.</i> 2500	
2. For her neat Freight	-	500	
			3000
3. The Sailors for their Wages; as they ought not to be freed where they have done nothing to deserve an Exemption; we will suppose to be	-	500	
4. The Value, which the Cargo would render neat at <i>Hamburgh</i>	-	-	6500
			<i>Rl.</i> 10000
That is 16 $\frac{2}{3}$ per Cent. or 1666 $\frac{2}{3}$, on			

And the Concerned in the Ship sunk ought to divide the said *Rl.* 1666 $\frac{2}{3}$ among them in the subsequent Proportions, *viz.*

1. The Ship should receive in Proportion to her Value when sailed, including the Provisions, and Money advanced to the Sailors, which we will suppose to be	-	<i>Rl.</i> 1000	
2. The Cargo, consisting only in Coals, which amounted with all Charges on board, to	-	1000	
			<i>Rl.</i> 2000

It

It is upon these two Articles alone the aforesaid *RI*. 1666 $\frac{1}{2}$ should be divided (making $83 \frac{1}{2}$ per Cent.) because no Freight, or Seamens Wages were due, as the Ship was just going down the River, on her outward-bound Voyage.

[a] By the Ordinance of *Antwerp* of 1563, N^o. 33; of *Rotterdam*, N^o. 465; of *Hamburgh*, N^o. 926; and of *Stockholm*, N^o. 1079; the Damage or Loss, caused by one Ship's running against another, is to be borne equally between them; that is, half by each; and if there be not a Sufficiency saved of either of them to pay the Moiety, the Concerned must be content with what there may be saved.

§ 67. The Premium which an Insurer receives is what binds him to answer for all such Damages and Losses as are expressed in the Policy: And if what the Insured paid was more than a common Premium, it implies that there were some Reasons for giving more; and an Insurer by accepting it, tacitly admits it to be a sufficient Consideration for any Circumstance whatsoever: So that this extraordinary Premium being proved, Allegations of Concealments, or uncertain Rumours of Retardments, can be of no great Weight against the Insured.

The Premium expressed in a Policy of Insurance, shews whether the Risk was more than common or not.

§ 68. The Payment, or Non-payment, of a Premium before a Loss happens, makes no Alteration in an Insurance, according to the present Custom, as the Insurers may insist upon being satisfied at the Time of their underwriting, if they do not incline to give Credit for it. The *Copenhagen* Insurance-Company expressly directs (see N^o. 1241 to 1243) that the Policy be not delivered before the Premium be paid; and that it appear by a Receipt of their Book-keeper that the Premium was actually satisfied the Day after the Policy was signed: But at Places of great Trade such Regulations are too limited. In the new Ordinance of *Amsterdam* of 1744, N^o. 566, the Commissioners of their Insurance Court are enjoined to proceed to an Execution, whenever an Insurer has made a Demand of his Premium twice, in two different Days. In a Proclamation made the Year after (N^o. 578.) it is expressed; "That both the Broker who did the Insurance, and the Person for whose Account it was done, shall be answerable for the Premium provided the Insurer make his Demand in fourteen Days, after having signed the Policy:" Notwithstanding this Order some Brokers agree with the Insurers to pay for all the Premiums at a fixed Time. At *Hamburgh* the Insurers regard only the

Premiums to be paid in ready Money, or within such a limited Time, as the Insurers shall agree.

the Brokers to whom they underwrite, as their Debtors for the Premiums: In their Ordinance (N^o. 1009) they have a Law which says, "If an Insurer trusts a Broker for his Premium, it is from him only he can demand it; yet if the Broker become insolvent, and the Insured have not paid him the Premium, he shall be obliged to pay it to the Insurer." At *London*, when Insurers sign to Brokers, and Office-Keepers, and leave the Policies in their Hands, it is they only that are to be looked on as Debtors for the Premium.

What Right
an Insurer has
to the Pre-
mium when
the Insured
becomes In-
solvent.

§ 69. But when an Insurer has an open Account directly with the Insured for the Premiums, we think he has, in case of the Insured's Failure, a prior Right against the Goods he insured on, when arrived, if remaining on board. And we are confirmed in this Opinion by its having been so decided in a Case at *Hamburg*, where a Bill of Lading of Goods, for Account of a Person in *France*, was pawned by the Factor to whom they were consigned, together with a Policy of Insurance that he had made on them: The Question was, which should first be satisfied, the Premium, the Loan, or the Proprietor? As it happened that the Proprietor had not insured the Goods in *France*, the Insurance done at *Hamburg*, in case of a Loss, must have been recovered, either for his Benefit, or that of the Lender; it therefore was but reasonable that the Insurer should be paid his Premium prior to both: Which, by the bye, may serve as a Proof that Bills of Lading, and Policies of Insurance, are not sufficient Securities to lend Money on; because if the aforementioned Goods had been insured elsewhere by the Shipper, or right Owner of them, the Insurance made by him who pledged them would not have been paid, in case of a Loss.

What Right
an Insured
has against
an insolvent
Insurer's
Estate.

§ 70. In case an Insurer fails, the *Amsterdam* Ordinance, N^o. 536, says, "That the Insured may make a new Insurance for the Sum insured, and order it to be notified to the Assignees of the insolvent Person by a Messenger from the Court of Insurance:" But it does not explain how the Insured is to be considered in regard to his Premium paid. The *Hamburg* Ordinance, N^o. 965, says, "That a new Insurance may be made, and the Premium be recalled from the insolvent Debtor." According to the *Stockholm* Ordinance, N^o. 1098, "The Insured may make a fresh Insurance, but cannot recall the Premium from his former Insurer, unless he can prove him to have

" have been in an insolvent State when he signed the Policy." The *Swedes* followed the Disposition of the *Amsterdam* old Ordinance, made in the Year 1626: But it seems as if the Compilers of the new Ordinance of that City, of 1744, found this Disposition not equitable, and therefore left it out: Which leads us to consider what may be the most practicable, just, and reasonable Method, in this Particular. For although it is well enough expressed in the *Hamburg* Ordinance that the Premium may be recalled from the insolvent Insurer, striking out his Name against it, yet it will not follow that this is always to be done, as the Assignees of a Bankrupt Insurer seldom have sufficient in their Hands to satisfy a Demand of Premiums for all the Risks depending; which might often amount to the greatest Part of what they might receive. Nevertheless if the Assignees cannot, or ought not to refund the full Premiums, it seems indubitable to us, that the Insured cannot be denied to be admitted an equal Creditor with others, for his Premiums on Risks still depending, and accordingly share *pro rata* of whatever the Bankrupt's Estate produces: moreover we are clear in Opinion that for those Losses, which were known at the Place where the Insured lived previous to the Insurer's Failure being public, he ought to be admitted as a Creditor in the Insurer's Estate, whether the Loss be total, or partial, and his Affairs sooner or later adjusted, and regulated.

§ 71. In 1620 (as is noted by *Malynes*) the Premiums at *London*, were

In the Year 1753,

The Difference of Premiums, in former Times and at present.

		in Summer	Winter
3 per Cent.	<i>Middleburg, Rotterdam, Rouen, Edinburgh, Hamburg</i>	1 per Cent.	1 $\frac{1}{2}$ a 2
4 -	<i>Bordeaux, Rochelle, Lubeck, Copenhagen</i>	1 $\frac{1}{4}$	2 a 2 $\frac{1}{4}$
5 -	<i>Lisbon, Biscay, Ireland</i>	1 $\frac{1}{4}$	1 $\frac{1}{2}$ a 1 $\frac{1}{2}$
5 -	<i>Dantzick, Riga</i>	1 $\frac{1}{2}$	2 $\frac{1}{2}$ a 3
6 a 7	<i>Cadiz, Gibraltar, Malaga</i>	1 $\frac{1}{4}$	1 $\frac{1}{4}$ a 1 $\frac{1}{2}$
8 a 9	<i>Livorno, Civita Vecchia</i>	1 $\frac{1}{4}$	1 $\frac{1}{2}$ a 2
10 -	<i>Venice</i>	1 $\frac{1}{2}$	1 $\frac{3}{4}$ a 2
9 -	<i>Archangel</i>	2 $\frac{1}{2}$	3
15 -	<i>East-Indies, out and home</i>	8	8

Which shews that the insuring Business must have been very lucrative in those Times : What Profit it leaves at present, we shall not pretend to determine ; however a Person who knows how to distinguish properly between good, and bad Adventures, and is a Judge of Shipping, &c. may still get Money by it. The Danger from the *Turks* and *Moors* must certainly have been very great, in 1620, to raise the Premiums on Voyages to *Portugal*, *Spain*, and the *Levant*, so high as those abovementioned ; but at present our Navigation being unmolested by them, the Risk is consequently less. We will add, that our Trade has gone on improving ever since ; and it is moreover presumed that our Insurers, by the Increase of Business, have learnt to find their Account in carrying it on, though at less Premiums.

The Difference at present, between Winter and Summer Premiums.

§ 72. When a Ship is detained longer at her loading Place, than the Time limited in the Policy, or comes from thence later in the Year, the *Stockholm* Ordinance (N^o. 1053) says, “ The Insured shall be obliged to acquaint his Insurers with it ; and “ because their Risk is greater, he shall give them an additional “ Premium, to make it equal to what is currently paid at the “ Time of her sailing.” At *London*, and almost all other Places, it is understood that the Insurers run all Risks, either in Winter or Summer, if no certain Time for departing be expressed in the Policy. It is however customary for Insurers in *London*, who act with Circumspection, to guard against extraordinary Events in Voyages by proper Explanations in the Policy. Examples of this may be seen in the Insurances on Ships from *Petersburg*, where different, or conditional Premiums are inserted, according to their sailing late, or early ; so that $\frac{1}{4}$, $\frac{1}{2}$, or 1 *per Cent.* is agreed to be returned, if a Summer Ship, that is, if she departs in *August* or *September*. And on Adventures expected from the *Leeward Islands*, a Difference is often made of 3, or 4 *per Cent.* in the Premium, if warranted to sail before the End of *August* ; or a Stipulation to return a correspondent Part of the large Premium given, when the Ship departs sooner.

The Date when a Policy is signed, serves to compare with any Proofs offered

§ 73. By the Date inserted on underwriting a Policy, compared with the Date of Facts, or Events which happened afterwards, and must be proved, it will appear whether there is any Reason to suspect that the Insured knew, or has concealed any Circumstance which he ought to have discovered to the Insurers.

surers. On this Head the Ordinance of *Copenhagen* N^o. 1271, says, " That whoever has Insurances made is obliged to declare plainly and sincerely, all the good, or bad News, he has directly or indirectly learnt concerning the Ship, either by Letters, or verbal Report, &c. And if the Ship which he gets insured is built of Fir, instead of Oak, and he has not declared it to his Insurers, they shall, in case of Loss under these Circumstances, pay only half the Sum they underwrote." to ascertain the Time when Facts happened; and to discover whether there is reason to suspect any fraudulent Concealment.

Mr. *Postlethwayte* in his Dictionary (Page 148) quotes a Case tried before Lord Chief Justice *Lee*, in 1743, where *John Thurmond* on refusing to pay 100 l. he had re-insured to *Giles Rooke*, was sued for it by the latter: It was alledged for *Thurmond*, that one Mr. *Crocket* had received a Letter by a Ship called the *Collet*, advising him that the *Polly*, the Ship insured by *Rooke*, and re-insured by *Thurmond*, had sailed from *Carolina* ten Days or a Fortnight before the Ship *Collet*, and that the Ship *Collet* arrived in *England* about seven Days before the Insurance was made, and that the Plaintiff *Rooke* had not informed the Defendant thereof; which was insisted on as a Fraud, sufficient to discharge *Thurmond* of this Insurance, it being, as was alledged, a settled and established Rule, that on making an Insurance all material Circumstances relating to the Adventure ought to be disclosed to the Insurer, to enable him to judge of them: And the Chief Justice allowed this Rule, and declared it as his Opinion, " That the Concealment insisted on, was a sufficient Circumstance to discharge the Defendant from the Policy: For, he said, that these Contracts are made upon mutual Faith and Credit, and that to conceal such Circumstances, which may make any Difference in the Adventure, is fraudulent, for the Insurer ought to have the Advantage of Judgment upon them; and that where such Concealment is, the Insurance ought not to bind:" But the Defendant not being able to make out this Fact, to the Satisfaction of the Jury, the Plaintiff *Rooke* had a Verdict in his Favour. Without pretending to penetrate into all the Motives the Jury had for differing from the Opinion of the Judge, we may remark, that as it was a Re-Insurance the Defendant *Thurmond* must needs have concluded that there were more than ordinary Motives for doing it; and if it appeared upon the Trial that he had received a larger Premium than was given to the re-insured *Rooke*, this

Difference might be considered as a sufficient Premium (as mentioned before, *Seet. 67.*) for the Retardment of three Weeks of one Ship more than another in a Voyage from *Carolina* to *London*; which is not at all uncommon.

Inconsistency
of the Laws
in some Pla-
ces to vacate
Insurances,
on a Possi-
bility of con-
veying bad
News at the
Rate of a
League or a
League and a
half per
Hour, from
the Time and
Place of the
Misfortune.

§ 74. According to the *Recopilacion de las Leyes de Indias* in *Spain* (N^o. 77) if a Loss happen at a Place from whence the Insured could have been informed of it by Land, at the Computation of a League in an Hour; the Insurance in such a Case shall be void, and the Insurers obliged to return the Premium, retaining only one half *per Cent.* It is not at all surprising that the Merchants in *Holland*, in 1570, opposed the Designs of the Duke *de Alva*, who strenuously insisted upon having such a Law introduced there; for wherever such a one is in Force, no Body can depend on being secure, who makes any Insurance upon Ships expected from abroad ready to sail, if they met with a Misfortune after a quick Passage. A Vessel from *Hamburgh*, for Example, may, with a fair Wind, get in eight Days to the Bay of *Biscay*: Suppose her bound to *Cadiz*; and that she sailed eight Days after the Post that carries Advice of Goods being sent by her. Insurance on those Goods was to be made at *Cadiz*; it might happen, that that Ship was in seven Days after Departure lost at *Bilboa*: this would be fifteen Days after the Departure of the Post from *Hamburgh* for *Cadiz*. From *Bilboa* to *Cadiz* is but 168 Leagues, and these, at a League *per* Hour, require seven Days, which added to the fifteen already mentioned make twenty-two: Now the Letters from *Hamburgh*, by the regular Post in Summer, do not get to *Cadiz* in less than twenty-eight Days: all Persons therefore by this Law are exposed to a Nullity of Insurance, even though they insured on the same Day they received Advice of their Goods being shipped. The Statutes of *Genoa* ordain (N^o. 153.) two Miles for an Hour, but explain and direct it to be understood that there must be a Proof of some Advice of the Loss being known, or at least some Appearance that it was so. The Ordinance of *France* (N^o. 701) fixes a League and a half to be reckoned to the Hour, when there is any Presumption that the Insured knew of the Loss; however in N^o. 702, it says, that by inserting in the Policy the Words *upon all good or bad News*, the Insurance is to remain valid: so that we may reasonably suppose, every Body in that Kingdom takes Care that those Words be put in the Policy, when they insure upon Effects hourly

hourly expected from abroad. By the *Rotterdam* Ordinance it is directed in the same Manner (N^o. 243, 244) to reckon three Miles for two Hours. The *Amsterdam* Ordinance, (N^o. 523) says, that when three Miles are reckoned for two Hours, it shall be presumed that the Insured knew of his Misfortune when he made the Insurance; though by swearing he did not, his Insurance stands good. At *London* all Insurances hold, provided both the Insured and Insurer were ignorant of the Arrival, or Loss of the Ship they were concerned in: And there are many Instances of Ships being arrived in the River, and even Advice of their Arrival received by other People in Town, at the Time the Policy was underwrote, without the Insurers being obliged to return the Premium: on the other Hand the Insurers must pay a Loss, if they cannot prove the Insured knew of it, and that he by an Oath maintains he knew nothing of it.

§ 75. It is not easy to describe the Number and Nature of the Proofs, or Documents required to recover a Loss. Some we will enumerate. It is common for the Insurers to ask,

What Proofs
or Documents
are required
to recover a
Loss.

1. What is insured elsewhere upon the Ship or Goods, for which the Loss or Damage is demanded?

2. The Insurers ask for the Protest; which is a Declaration upon Oath, usually made by the Master, and some of his People, before a Justice, Notary, or Consul, at any Place where they first arrive; setting forth whatever bad Weather they met with in the Voyage, or any other Accident that befel them: As also what Precautions they took, to guard against the ill Consequences to be apprehended from those Accidents, with the Motives they had for going into any other Harbour than that they were bound to: Which Sort of Protests are now become almost a mere Matter of Form, as a Notion is propagated at some Places, that if the Masters neglect protesting, immediately after Arrival, against the Damages that have resulted from any bad Weather, they make themselves answerable for those Damages that shall be found in any of the Goods aboard; from which they believe a Protest frees them. But this cannot be sufficient to clear them on all Occasions. It is true the *French* Ordinance of 1681, *Tit. x. des Congés & Rapports, Art. 4.* enjoins, "That all Masters shall be obliged to make a Report within
" twenty-four Hours after their Arrival, before the Lieutenant
" or Judge of the Admiralty, of all that has happened in their
" Voyage." But we imagine that the Intent of this Order is
only

only to prevent the making any partial Declarations, by not allowing Time, and Room for it ; which might have some Weight where the Master was no ways concerned, but not when the Question is, whether the Damage did not proceed from his own Carelessness, bad Stowage, or Defect in caulking his Decks ; for on any Appearance of such Neglects, the Proprietors of the Goods have a Right, notwithstanding the Protest, to insist that the Ship be visited, and a particular Examination of the Crew taken, how, and where these Goods were laid. At *Hamburg* it is the Custom soon after a Ship's Arrival, tho' not just within 24 Hours, to send a printed Notification to every Person, who has Goods on board, importing that the Master fears his Cargo may have suffered Damage: The Intent of this is, that all who have Goods to receive, may send to inspect the Ship, and the Places where they were stowed, before they take them ashore. This is certainly a very prudent Precaution, and greatly tending to the Master's Justification [a]. At *London*, Masters seldom do any thing more, than to have their Intentions of making a Protest noted before a Notary Publick, without giving any Information to the Persons who are to receive the Goods, &c.

3. For the Bills of Sale, and often for the Custom-house Registers, to find out the Owners, when Insurances are made on the Body of a Ship.

4. For Bills of Lading signed by the Master ; which are usually called for, to prove an Interest in Goods : But if there is any apparent Reason to distrust their being genuine ; all such Clearances, or Registers from the Custom-houses, as are ordinarily given where the Ship has been dispatched, are called for : and upon Proofs of such Authority a greater Dependence in general may be made, than upon mere Bills of Lading ; more especially upon Certificates from those Registers which the *Spanish* Ships in their *West-India* Trade carry along with them, and of which Duplicates remain behind in the Custom-house : For the Manner of making such a Register is, that every Person who has Goods to ship, previous to their Embarkation gives an Account of their Bales and Marks, and pays a Duty for them, either by Weight, or Measure, which is explained in a Cocket ; and when they pass the Gates, or go to be shipped, they are searched to see whether they correspond with the Entry delivered in ; and if they do, each Parcel is marked with a Custom-house Stamp, and the

Cocket

Cocket signed by the Searchers: When on board, another Set of Visitors re-examine them, and put their *Cumplido* upon each Cocket, out of all which the general Register is framed, to go by the Ship, in order to a Re-examination by the King's Officers at the Places of their unloading in *America*.

[a] In the Ordinance of *Hamburgh* of 1603, it is said, (in the Chapter Of *Masters and Mariners*, Art. 34.) that every Master is diligently to inspect the Stowage of the Goods, and to take Care that they be not exposed to Damage; for if any ensue, or they be diminished, through the Master's or Mens Fault; the former shall be obliged to make the Merchant Satisfaction for the same: And Senator *Langenbeck* in his Annotations upon this Law, (Page 78.) remarks that although the City of *Bordeaux*, as well as several others both in *France* and *Italy*, where Wines are shipped, keep a Set of sworn Labourers, or Stowers, to stow Goods well aboard of Ships, the Master is not thereby freed from supervising, or being answerable for the Stowage, as some of them have pretended; because the Stowers must put them in such Places as the Master, or his Officers direct; and the Insufficiency of such a Plea was proved in a Law Suit carried on there, before the Admiralty in *Hamburgh* in 1725, by *Tessier*, against Captain *Detlof*.

§ 76. In most Policies the Time is expressed when Insurers shall pay in Case of a Loss. At *Hamburgh* (where else no Abandon of Effects is admitted) the Ordinance says, N^o. 939. "That when a Ship, bound to a Place in *Europe*, shall not be heard of in three Months, beyond the usual Time for such a Voyage, she may be considered as lost, and the Insured is permitted, to abandon Ship and Cargo to the Insurers, and to demand Payment of the Sums they have respectively underwrote. The Insurers shall be obliged to pay 92 per Cent: within two Months from and after the Time such Abandon was notified to them, on Behalf of the Insured, by the Broker, or their Dispatcher." And in N^o. 940. it is further ordained, "That in case the Insurers should make any Demur to pay within the before-limited Time, the Insured may stay untill a Year and two Months are elapsed from the Time of the Ship's Departure, and then the Insurers shall be obliged to pay 100 per Cent. without any Deduction: and if the Insured desires in the mean while to have Security given, they shall be obliged to give it. But whenever there is certain Advice, that a Ship is lost or taken, and her Salvage and Recovery, desperate; the same Ordinance directs (N^o. 961.) that the Insurers

In what Time Losses or Damages are recoverable from Insurers.

" shall

“ shall be obliged to pay at the Rate of 98 *per Cent.* within two
 “ Months from, and after the Time, that such Loss has (by the
 “ Broker) been notified to them ; provided that such Loss has
 “ before been proved, by the proper and necessary Documents.”
 N^o. 950. of the said Ordinance is remarkable for enjoining,
 “ That notwithstanding a Policy contain a Clause, that the In-
 “ sured shall not be obliged, in Case of a Loss, to produce any
 “ thing more than the Policy, yet he shall be constrained not on-
 “ ly to prove the Loss of the Vessel, but also that he actually had
 “ an Interest in her, either by Bills of Lading, or some other
 “ Documents.” At *London* it is a Custom with the Insurance
 Companies, in eight Days from the Adjustment of the Loss to
 pay 98 *per Cent.* deducting half *per Cent.* for prompt Payment :
 The private Insurers pay the same Sum of 98 *per Cent.* in a
 Month from the Time of settling the Loss ; and both the one,
 and the others, in Cases of Salvage and Reclaims, are always ve-
 ry ready to pay something on Account, or to advance Money for
 carrying on Suits, either upon the Reasonableness of the Thing,
 or a Tender of proper Security.

N. B. By the Ordinance of *Amsterdam*, N^o. 573. a Loss is to be paid within
 three Months after its being notified. By that of *Copenhagen*, N^o. 1259.
 within two Months after Proof. By that of *Stockholm*, N^o. 1207. within
 one Month after Proof. By the *Recopilacion des Leyes de Indias* in *Spain*,
 N^o. 105. within six Months after its being duely proved ; and within a
 Year and half, after the Ship's sailing if no Advice is received. But the In-
 sureds were formerly obliged by their Policies, to give Security, that they
 should pay 133 $\frac{1}{3}$, for every 100 they received too much ; but, in the Po-
 licies at *Cadiz* now (N^o. 131.) this Condition of the 33 $\frac{1}{3}$ *per Cent.* is left
 out.

Return of
 Premiums.

§ 77. It is an universal Custom, and has been so Time im-
 memorial, as the Ordinance of *Antwerp* (N^o. 64.) explains it ;
 that in case too much is insured, or Insurances are made at di-
 vers Places without Fraud, the first shall stand good, and the last
 Insurers shall return the Premium, keeping only one half *per Cent.*
 for their Trouble of keeping a Book, or Account of it. It of-
 ten happens that Goods are insured to come in certain Ships ex-
 pected from abroad, but do not come by them ; and as in this
 Case no Risk is run, the Insurers are obliged to return the Pre-
 mium, as above. Sometimes Ships that have begun to load,
 change their Voyage, and unload again what they had aboard :
 Under

under which Circumstances the Insurers are intitled to something more than half *per Cent.* for the Time the Risk continued; though whilst the Ship was in Port, it could be but very small. The Ordinance of *Amsterdam* (N^o. 534.) allows in such Cases to keep one *per Cent.* And the *Stockholm* Ordinance (N^o. 1072) directs that it shall be so much, as impartial Arbitrators, or their judicial Court of Insurances, shall adjudge.

§ 78. We have already, in § 9 and 10, hinted something how Customs varied in regard to what Insurances are first to stand good: And in § 16. we think we have evidently shewn, that when a Space has intervened between shipping and shipping, insuring and insuring, the Insurers, who stood alone for a while exposed to a Risk upon the Goods first shipped, should not afterwards be put on a Level with those who underwrote later, and for whose Risk Goods were later sent aboard, or not sent at all. At *London*, it is commonly insisted, (as mentioned above, § 9. 16.) that all who have insured on Goods expected for one and the same Person's Account, without particularizing them; whether they be comprehended in one, or more Policies, and underwrote sooner or later; shall contribute equally to any Loss, or the Return of Premium if over-insured; which would be just and right, if all the several Policies had been signed before any Goods went on board; but not otherwise. For a Proof of this Assertion, let us suppose that a Person who expected Goods from *Cadiz* in the Ship *Banstead*, to the Value of 5000 *l.* insured 2000 *l.* provisionally at the *London Insurance* Office, under the general Terms of Goods, before he knew of any Goods being shipped: On his receiving Advice, some Time after, that the Value of 2000 *l.* was gone on board, he got 3000 *l.* more insured by the *Royal Insurance* Company: now we maintain that two thousand Pounds Value of the Goods first shipped, ought to be applied to the *London Insurance* Company, and not mixed with the Goods loaded last; for it is possible that the *Banstead* might have perished in the Bay of *Cadiz*, with only the first shipped Goods on board, and before the Resolution was taken in *London* to increase the Insurance; consequently the *Royal-Exchange* Company would not have been comprehended in the said Loss: And although the Laws of *France*, *Holland*, *Hamburg*, and *Stockholm*, are in this Respect less subject to Contrariety, by ordaining that only the Persons who underwrote one and the same Policy,

The Custom in what Manner Returns of Premiums are to be made; and to what Policies applicable, differs at different Places.

An Essay on Insurances.

shall stand upon an equal Footing, and that the first-signed Policy shall first stand good; yet this also admits of some Distinctions, as will appear by the following Instance.

A at *Hamburg*, intending to ship the Value of 20000 Rix-dollars for his own Account in the *Cadiz* Galley, gives *B* a Broker, Orders to get 10000 *Rlrs.* insured; and to another Broker *C* he gives the same Sum.

<i>B</i> opens his Policy, and gets	<i>C</i> , opens his Policy, and gets
signed, the 1st of <i>Jan.</i> 4000	signed, 2d <i>Jan.</i> 5000
6th ditto 3000	3d ditto 2000
7th ditto 3000	4th ditto 3000

We apprehend that notwithstanding here were two Policies, and that that of *A* was first opened, yet the Insurers on both ought to be responsible according to the Dates when each signed: For suppose that by the 3d of *January* the Value of 12000 *Rlrs.* had been sent on board, and the Ship in the Night between the 3d and 4th was burnt; the 6000 *Rlrs.* upon *B*'s Policy had not been signed, and consequently only the 4000 *Rlrs.* could be engaged in the Loss; but upon *C*'s it would fall on 7000 *Rlrs.* From whence it follows, that in case *A* had only shipped till the 3d of *January* to the Value of 12000 *Rlrs.* the aforesaid Insurance of 20000 *Rlrs.* remained executed: And if on the 8th of *January* he changed his Mind, and resolved to ship no more, the returned Premium on the 8000 *Rlrs.* ought in Justice to be made upon,

<i>Rlrs.</i> 2000, of the 3000 from <i>C</i> 's Policy, signed the 4th <i>Jan.</i>
3000 - from <i>B</i> 's signed 6th ditto
3000 - from ditto signed 7th ditto

So that the Law of *Spain* (N^o. 85.) should in Strictness be followed, which ordains, "That the Insurers who signed last in "Date should return the Premium, in case of an Over-Insurance." By all which we think the Necessity of being as explicit as possible in all Insurances, is rendered sufficiently plain.

When Orders
are given to
insure a-
broad, the In-
surance should
commence
from the Date
of such Or-

§ 79. When an Insurance is intended to be done abroad, and at home; an Explanation in the Policies on both Sides, which shall have the Preference, or stand good first, is a very material Circumstance, because this cannot be decided by the Dates alone. For Instance: A Person residing at *Hamburg* had the Value of *Rlrs.* 10000, or 2400 *l.* Sterling, to ship for *Lisbon*, and

and had actually loaded, on the 1st *July*, to the Value of 4000 *Rlrs*; whereupon he gave an Order that Day to his Correspondent in *London*, to get Insurance done for 1000*l*. Sterling, without any Limitation either in Premium or Circumstances; and on the 4th of *July*, he got insured at *Hamburgh* the remaining 1400*l*. or 17500 *Mks*. though he had not then shipped more than the first-mentioned 4000 *Rlrs*. or 12000 *Mks*. and the 5th of *July* some Circumstances occurred, that induced him to alter his Design, and to resolve on shipping no more: Now the Query is, Who ought to make a Return of Premium according to the Sense of the *Hamburgh* Ordinance? To which we reply: That notwithstanding the Underwriting of the *London* Insurers must be of a later Date than that of those in *Hamburgh*, who underwrote the 5th of *July*, because the Order sent to *London* on the 1st of *July* could not possibly arrive there before the 7th, and therefore the Underwriting in *London*, could not be before that or the next Day; yet we are very clear, that the Insurance in *London*, though later in Date, ought to stand good before that made at *Hamburgh*: For if between the 1st of *July*, that the Order for Insurance was sent to *London*, and the 4th of the same Month, when it was made at *Hamburgh*, the Ship had been burnt, this last-mentioned Insurance could not have taken Place; and consequently that done in *London*, on the Order given the 1st of *July*, must have born the entire Loss of these first shipped Goods. Therefore we think it is evident, that the Return of Premium ought to be made by the *Hamburgh* Insurers; notwithstanding it is said in the Ordinance of that City, (N^o. 919) " That when any Person " has caused Insurances to be made at more than one Place, it " shall not be in his Choice, or Power, to determine which " Insurance to return, or annul: And no Consideration shall " be had, which Insurer paid more or less Premium; but the " Policy which is first in Date, shall first stand good:" On a Trial, due Distinction would be made at *Hamburgh*; and the Validity of the *London* Insurance would not depend on, or be determined by, the Date of signing; but by the Time when this unlimited Order was given for making it.

§ 80. Re-Insurances may be as justifiable, and made with as little Scruple, as Insurances, provided the true Motives for doing them are not concealed. By an Act of Parliament passed

M 2

in

ders, and not from that when the Insurers underwrote; that it may the easier be determined whether the foreign, or home Insurers are to stand first, or last.

Of Re-Insurances.

in *England* the 25th of *March* 1747 (N^o. 1297) it is enacted,
 “ That it shall not be lawful to make Re-Insurance, unless the
 “ Insurer shall be insolvent, become a Bankrupt, or die: In
 “ either of which Cases, such Insurer, his Executors, Admi-
 “ nistrators, or Assignees, may re-insure to the Amount of the
 “ Sum before insured, provided it shall be expressed in the Po-
 “ licy to be a Re-Insurance.” The Leave given by this Act for
 the Executors of an Insurer, who dies solvent and in good Cir-
 cumstances, to re-insure, is very necessary, and will often be
 done for his Heirs to secure the Estate he has left: But to make
 Re-Insurances for insolvent Insurers, or for those who become
 Bankrupts, will seldom happen. The Insureds will naturally
 take Care for themselves by immediately making fresh Insu-
 rances, and not neglect to put the Loss of the Principal out of
 the Question, when they can do it by only paying a new Pre-
 mium. It would be highly imprudent to postpone and rely
 upon any Re-Insurances to be made for their failed Insurer, since
 it cannot be expected to be done so soon: And even supposing
 that a Re-Insurance were made for the Bankrupt-Insurer’s
 Estate, if a Loss happened, as the Premium of this Re-In-
 surance must come out of the common Stock, it would seem that
 the Recovery of such Loss ought to be for the Benefit of the Body
 of Creditors: And thus the insured Creditor could receive but a
 Dividend equal with others. Therefore common Sense dictates
 to the Insured, that he ought to do the best for himself, whilst
 he has it in his Power, that is, make a fresh Insurance; whereby
 he will remain a Creditor against the Bankrupt’s Estate only for
 what Premium he paid, or any Costs that attended it: And it is up-
 on this Principle we maintain, § 70, that whenever the Insureds
 can make in Time fresh Insurance for any unexpired Policies
 that had been signed by a Bankrupt Insurer, they ought not to
 be admitted as Creditors in the Bankrupt’s Estate for more than the
 Premium: Which seems not to have been well distinguished by
 an Act of Parliament made 19 *Geo. II.* which says, “ Whereas
 “ Commissions of Bankruptcy have frequently issued against
 “ the Obligor or Insurer, &c. before the Loss of the Ship or
 “ Goods has happened; it hath been a Question whether the
 “ Obligee or the Insured should be let in to prove their Debts,
 “ or be admitted to have any Benefit under such Commission;
 “ it is enacted that they shall be admitted to claim, and after
 “ the

“ the Loss or Contingency to prove the Debt thereon, in the
“ like Manner as if the same had happened before the issuing
“ of the Commission; and receive a proportionable Dividend
“ equal with others.” Which in our Opinion should only be
for such Contingency, and for so much as the Insured could not
find any Remedy to help himself by fresh Insurances; such as
Damages which were not known to him, or their Amount not
yet made out or decided. The Act passed for not permitting
Re-Insurances, except in the above-recited Cases, was intended
to hinder some gaming Re-Insurances then in Vogue; but we
think the bad Causes only should have been excepted: For as
it now stands, it deprives the *London* Insurers, without any just
Reason, of the Liberty to re-insure themselves, when they have
a Mind to discontinue their Risks; and it may oftentimes be ne-
cessary, even for a Person in good Circumstances, to drop his
Insurance Business, and to re-insure all his depending Risks.
We remember that formerly some People in *London* used to
make a Branch of Trade of having their Friends abroad under-
write for them, and then re-insuring themselves at home at a
lower Premium: We own we cannot perceive that any more
Harm could follow from this, than from executing it by Com-
mission: On the contrary, if the Premium was increased, whe-
ther it was received by the Insurer, or Re-Insurer, was not ma-
terial, as they both resided in *England*. However this Sort of
Trade has it seems dropt of itself, as on certain Occasions Gentle-
men were condemned to pay as Insurers abroad, without ever hav-
ing been able to recover from their Re-Insurers in *London*. But
this, with some other Subjects, we must leave for a future Con-
sideration, and here end this Essay. /

(96)

A
C O L L E C T I O N
O F
R E M A R K A B L E C A S E S
O F
I N S U R A N C E S , A V E R A G E S ,
A N D
B O T T O M R I E S .

With OBSERVATIONS made on the same, particularly
distinguished by *Roman Letters* in the Margin.

C A S E I .

*Which shews what Sum ought to be insured, so that
in case of Loss, the Principal, the Premium, and
Interest may be recovered.*

CASE I. **I**N the Year 1725, and before that Time, it was customary
at *Cadix* to sell Goods to be paid for at the Return of the
Flota to *Old Spain*; charging an Interest of 8 *per Cent. per*
Annum, on the Amount of the Goods thus sold. But when
N. M. (who at that Time came to be established there) was
aware that this Method of Sales must be attended with no small
Hazard; inasmuch as the Buyers seldom made much if any In-
surance upon such Risques; he therefore insisted upon the Sel-
lers having the Liberty of making the Insurance that should be
needful;

needful; to which the Buyers consented; provided they were to be charg'd for such Insurance at a Premium certain, as should be agreed on between them. So that in case the Ship and Goods were lost, the Buyers were absolutely free from any Demands to be made on them; and the Sellers were to remain satisfied with the Insurance they themselves had made or procured to be made; and which if they neglected to do, they were to be look'd upon as their own Insurers.

CASE I.

On this footing, the House wherein *N. M.* was lately become a Partner, sold to the Owner of a *Spanish* Ship, which was one of the Flota, and ready to sail, Goods to the Value of - - - - - Dollars 40,000

To this Amount of the Goods was added a Premium of 11 *per Cent.* being what was agreed with him at the Time of making up the Account, for insuring the Risk out and home. And the House remained at Liberty to make the Insurance in foreign Parts on the best Terms they could. Which 11 *per Cent.* made

4,400

44,400

Interest at 8 *per Cent.* for 18 Months, in which Time the Flota is commonly expected to return - - -

5,328

Dollars 49,728

For which Sum the Buyer signed an Obligation, and proceeded on the Voyage himself in his Ship with the Flota. After his Departure, when *N. M.* came to inspect the Books, and to consider the above Account, he observ'd that by the Hurry in which Business is commonly transacted at such Times, a very material Omission had been made in settling with the *Spaniard*: and that the Person to whose Care the same had been left, had committed an Error in charging the Premium on no more than 40,000 Dollars, because in case of a Loss, the House must necessarily loose, not only the whole Premium, but the Interest likewise on the Premium and Principal together: Which to have recovered in full he ought to have charg'd further as follows, *viz.*

On 9728 Dollars at 11 <i>per Cent.</i> Premium	-	1070	8
1070 8 - 12 <i>per Cent.</i> Interest	-	128	45
1198 53 - 11 - - -	-	131	84
131 84 - - 12 - - -	-	15	82
147 66 - 11 - - -	-	16	24
			On

Cases of Insurances.

CASE I.

On 16 24	- - 12	- - - -	1 95
18 19	- 11	- - - -	2
2	- - 12	- - - -	24
			<u>Dollars 1366 62</u>

And altho' the House at *Cadiz* (who were only the Factors) did procure Insurance to be made abroad at 9 and 10 *per Cent.* yet that Difference in the Premium was not sufficient to make Amends for the Mistake above-mentioned: For besides falling short the above 1366 $\frac{62}{100}$ Dollars, they must likewise lose the Commission they paid for making the Insurance and the usual Deduction of 2 *per Cent.* in being paid only 98. It happened that this Ship on her Return home was actually lost, and as they were obliged to accept from some of the Insurers a Composition of 92 $\frac{88}{100}$ *per Cent.* it would have further considerably augmented their Loss, had not an Alteration in the Coin happen'd in that Interval, which helped them out to make good the Debt. But from thenceforward they thought it more adviseable not to take any Insurances of this Nature on themselves as Factors: but to apply to each of their Principals his proportional Share, and leave it to them to take Care of their own Insurances.

Now to make the Account quite exact according to the Agreement made with the *Spaniard* at *Cadiz*, the House ought to have charg'd him as follows, *viz.*

N^o. A.

The Premium on *Dollars* 51094 $\frac{7808}{8768}$ at 11 *per Cent.* is
Dollars 5620 $\frac{8768}{8840}$

The Interest on 45620 $\frac{3840}{8768}$ at 12 *per Cent.* is
 5474 $\frac{3968}{10000}$

Dollars 11094 7808
 + 40000

makes *Dollars* 51094 $\frac{7808}{8768}$

For if from - - - *Dollars* 100 Insured

You pay premium - - - *Dollars* 11

And Interest on the premium 12 *per Cent.*

For 18 Months - - - - - 1 $\frac{32}{100}$
 ----- 12 $\frac{32}{100}$

So that you have no more than - *Dollars* 87 $\frac{68}{100}$ covered by

by this Insurance for 100 of your Interest. And then as 112 CASE I.
is 100 Principal, so $87\frac{68}{100}$ is but $78\frac{32}{100}$ and therefore for $78\frac{32}{100}$
you must insure 100, which gives you for

Dollars 40000 — 51094 $\frac{7808}{10000}$ as above.

And as a Caution to prevent People from falling into Errors, N°. B.
we will add the following Examples; and first we will shew,
That when a Premium of 100 *per Cent.* was given for Money
on Bottomry from *Cadiz* to *La Vera Cruz*, and the Premium
of Insurance at *London* for the Risk out and home was 40 *per*
Cent. it did not yield 8 *per Cent. per Annum* Interest, supposing
the Voyage to be performed in eighteen Months.

In *October* 1742, it was advised from *Cadiz*, that 100 *per*
Cent. Premium was given for Money on Bottomry to *La Vera*
Cruz, when Money was to be had there on Interest at 8 *per*
Cent. per Annum, and at the same Time the Insurance for the
Risk out and home might be procured at *London* for 40 *per*
Cent. We will examine how the Account would turn out for
a Person living at *Cadiz* to borrow Money at 8 *per Cent.* Inte-
rest, and to lend it on Bottomry, and insuring at *London* on
the Terms aforesaid, supposing the Returns to arrive in eighteen
Months.

And in order to make this out, we may calculate that for N°. C.
each 100 Dollars lent at *Cadiz*, there comes 200 Dol-
lars back from *La Vera Cruz* (allowing thereby the Difference
between the Dollar of *Cadiz* at 8 Rials Plate, and the *La Vera*
Cruz Dollar, which is worth $10\frac{1}{2}$ Rials Plate, as an Equiva-
lent for the Commission at *La Vera Cruz*, and the Freight and
Indulto to be paid at *Cadiz*) and then the Account would stand
thus:

Cases of Insurances.

CASE I.

Suppose Insurance to have been made at *London* on the Value
of - - - - - *Dollars* 10,000

For the Deduction of 2 *per Cent.* as the
Insurers in case of a Loss pay no
more than 98 *per Cent.* *Dollars* 200

For $\frac{1}{2}$ *per Cent.* deducted on *Dol.* 9800
for prompt Payment - 49

For Commission at 2 *per Cent.* - 196

For the Premium paid on *Dol.* 10,000
at 40 *per Cent.* - 4000

For Commission making the Insurance
 $\frac{1}{2}$ *per Cent.* - 50

For one Year's Interest at *Cadiz* on
Dol. 4050, at 8 *per Cent.* - 324

For $\frac{1}{2}$ a Year ditto, at 4 *per Cent.* on
Dol. 4374 - - - 1764 $\frac{96}{1000}$

4993 $\frac{96}{1000}$

Thus 10,000 Dollars insured at *London*, will, at
the End of 18 Months, leave neat at *Cadiz* no more
than - - - - - *Dol.* 5006 $\frac{4}{1000}$

And as 100 Dollars lent, are at the end of
12 Months - - - - - 108

And at the End of 6 Months more
4 $\frac{32}{1000}$
112 $\frac{32}{1000}$

Then 112 $\frac{32}{1000}$ are to 100—as 5006 $\frac{4}{1000}$ are to 4456 $\frac{10608}{111111}$.
So that 4456 $\frac{10608}{111111}$ lent, will with the Addition
of 100 *per Cent.* return no more than *Dol.* 8913 $\frac{9984}{111111}$.

And as the aforefaid Sum of - *Dol.* 4456 $\frac{10608}{111111}$

With the Premium of Insurance paid for

Dol. 10,000, at 40 $\frac{1}{2}$ *per Cent.* - 4050

And Interest at 112 $\frac{32}{1000}$ - - - 1048 $\frac{624}{111111}$

Make together *Dol.* 9555

It would fall short - - - *Dol.* 641 $\frac{1148}{111111}$.

And therefore it plainly appears that instead of Gain, there
would be a Loss of 6 $\frac{1}{10}$ *per Cent.*

Or if we were to suppose it for Account of a Person living at
London, where he could have Money at 5 *per Cent.* Interest;
yet

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yet the Commission he must pay at *Cadix* for the Disposition of CASE I.
it on Bottomry, would make the Loss pretty much the same.

But supposing the Premium to have been agreed at 20 *per Cent.* for the outward, and 20 *per Cent.* for the homeward Risk. N^o. D.
Query, What Difference would it make?

To answer which it must be observed, that if the Ship should be lost outward-bound, the Premium for the homeward-bound Voyage must be returned, deducting $\frac{1}{2}$ *per Cent.* as usual. Therefore it is needless to insure so much on the outward as on the homeward Voyage.

For Example,

If for *Dol.* 100 insured, there is paid in
case of a Loss - *Dol.* 98
Deducting the Premium which is 20 *per Cent.*

78 for *Dol.* 100.

On the outward-bound Voyage the Insurance
needs not be made for more than 128 $\frac{16}{11}$,
which at 20 *per Cent.* is - - 25 $\frac{2500}{1900}$.
And on the homeward-bound Voyage, as 78 is
to 100, so is 125 $\frac{250}{190}$ to 161 $\frac{238}{1041}$, at 20 *per*
Cent. is - - - 32 $\frac{3280}{13210}$.

Making in the Whole *Dol.* 157 $\frac{13010}{13210}$.

Whereas if *Dol.* 100 insured,
gives as above - *Dol.* 98
Deducting the Premium 40 *per Cent.*

It follows that for 58—*Dol.* 100
must be insured :

And for 100, 172 $\frac{24}{11}$, which at
40 *per Cent.* is - - - 68 $\frac{56}{18}$

168 $\frac{56}{18}$

Difference *Dol.* 11 $\frac{96010}{882180}$

Consequently there will be a Saving of about 6 $\frac{1}{2}$ *per Cent.* in making the Insurance separately at 20 *per Cent.* and 20 *per Cent.* home, rather than at 40 *per Cent.* jointly.

Cases of Insurances.

CASE I. We will next consider what the compound Premium ought to be for Insurance made out and home; supposing the current Premium outwards to be 25 *per Cent.* and the homeward at 20 *per Cent.* to pay 98 *per Cent.* in case of Loss with the usual Deduction of $\frac{1}{2}$ *per Cent.* from the 98

The Answer will be $39 \frac{8506}{9751}$.

For if from £. 100 insured
2 *per Cent.* is deducted

And $\frac{1}{2}$ *per Cent.* on 98 $\frac{98}{200}$
97 $\frac{102}{200}$

Deduct the Premium

paid for Insurance 25 — *per Cent.* outward
Then for — £. $72 \frac{102}{200}$ must be insured £. 100
And for £. 100 must be insured £. $137 \frac{13226}{14302}$,
which at 25 *per Cent.* Premium for the out-
ward Voyage is — — —

$34 \frac{6932}{14302}$
£. $134 \frac{6932}{14302}$

Proof.

For from £. $137 \frac{13226}{14302}$
Deduct 2 *per Cent.* $2 \frac{10996}{14302}$
135 $\frac{2230}{14302}$

And $\frac{1}{2}$ *per Cent.* — — —
thereon $\frac{9800}{14302}$

There remains £. $134 \frac{6932}{14302}$ neat to be paid in
case of a Loss.

Again, if from £. $97 \frac{102}{200}$, as above,
is deducted the Pre-

mium paid for In-

surance — 20 *per Cent.* homeward

Then for £. $77 \frac{102}{200}$, must be insured £. 100.

And for £. 100 must be insured £. $173 \frac{27967327}{30202501}$,
which at 20 *per Cent.* Premium for the home-
ward Voyage is — — —

$34 \frac{39314966}{30202501}$
£. $169 \frac{9977431}{30202501}$

Proof.

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CASE I.

Proof.

From £. 173 $\frac{27967327}{50202501}$
Deduct 2 per Cent. 3 $\frac{26412497}{50202501}$

170 $\frac{1554810}{50502501}$

And $\frac{1}{2}$ per Cent. there-

on - - 47709900
50502501

There remains £. 169 $\frac{9977431}{50502501}$ as above.

Then

If for £. 173 $\frac{27967327}{50202501}$ the Premium is £. 69 $\frac{9977431}{50502501}$, it is
for £. 100 --- £. 39 $\frac{8506}{9751}$.

C A S E II.

Proving what yearly Interest was made, when Money on Bottomry at London for China was lent at 40 per Cent. and the Premium of Insurance out and home was at 20 per Cent. supposing the Lender to be in Disburse two Years. CASE II.

IN the Month of June 1746, the Premiums for Money on Bottomry on foreign Ships, and for Insurance thereon were at the Rates abovementioned.

Therefore computing that £. 100 lent was to bring back £. 140, and that in case of Loss only 98 less $\frac{1}{2}$ per Cent. was to be recovered for every £. 100 insured; the Insurance therefore ought to be made for £. 142 $\frac{3}{4}$, to recover - £. 140

Deduct the Premium, which at 20 per Cent. is - 28 $\frac{1}{2}$

It leaves £. 111 $\frac{3}{4}$
Deduct 100

on £. 100 Principal } The compound Profit in two
on 28 $\frac{1}{2}$ Premium } Years is - - 11 $\frac{3}{4}$

And as 128 $\frac{1}{2}$ --- 11 $\frac{3}{4}$, so £. 100 is 8 $\frac{3}{4}$ in two Years.

Then 108 $\frac{3}{4}$ multiply'd by 100 makes 10888 $\frac{3}{4}$, of which the square root is 104 $\frac{1}{2}$ for one Year.

Proof.

Cases of Insurances.

CASE II.

Proof.

at $4\frac{1}{3}$ per Cent. is

$$\text{£. } 128 : 11\frac{3}{7}$$

$$5 : 11\frac{3}{7}$$

at $4\frac{1}{3}$ per Cent. is

$$\text{£. } 134 : 2\frac{7}{8}$$

$$5 : 16\frac{4}{76}$$

Differs only

$$\text{£. } 139 : 18\frac{64}{76} == \text{£. } 140.$$

$$1\frac{6}{76}$$

A multitude of Examples and Questions of this Nature might be added, which well deserve the Attention of Merchants and Insurers: And however trifling they may seem in themselves, we cannot forbear declaring, that we have met with very few Adventurers, who, during the last War, have not been one Way or other more or less misled in regard to Bottomry Premiums for want of a right Calculation.

C A S E III.

CASE III. *Shewing how it was allowed to a Person over-insured at London, to recover on a Loss, not only so much of his Premium as was sufficient totally to reimburse himself for the Premium he paid; but likewise what Deductions were made in order to pay him 98 per Cent. for each 100l. underwrote.*

IN the Year 1745, H. L. made an Insurance in London for 1900 l. Sterling, for Account of a Correspondent abroad, on Goods in a Ship from Martinique to Nantes at $36\frac{3}{4}$ per Cent. to pay 98 per Cent. in case of a Loss: And the Livre of Martinique was valued in the Policy at 11 Pence Sterling, without any Declaration therein, whether the Premium was included or not in the said Valuation. But notwithstanding such an Omision, it was natural and easy to comprehend (as is proved in our Essay, § 41.) that to admit a Valuation of 11 Pence for a Livre from the French Islands, which in reality is not worth above 8 Pence, the Premium ought to be understood to be included therein;

therein ; yet as the Merchants and Brokers (though possibly it CASE III.
 proceeded meerly from Want of Reflection, § 41, p. 45.) had
 once established amongst themselves that it should be so : And
 Instances of Adjustments of Losses with private Insurers being
 produced where the Addition of Premium had actually been al-
 lowed over and above the Valuation of 11 Pence *per* Livre ;
 the Question then only was, how upon this wrong Principle
 to form an exact Account of the Quantum ?

Now as it appeared that *H. L.* had on board, at the Valua-
 tion of 11 Pence, (exclusive of the Premium) to the Amount
 of - - - - - L. 1085.

Some of those concerned in the Ad-
 justment of this Loss (being perhaps
 sensible of the Over-Valuation) were
 of Opinion, that only the Premium
 should be added thereto of $36\frac{3}{4}$ to pay
 98, which is - - -

406 : 17

N°. A.

And so would have him recover at

98 *per* Cent. on - - - L. 1491 : 17 L. 1461 : 16

And the Premium at the Rate of

$36\frac{3}{4}$ *per* Cent. returned on 408 : 3 148

L. 1900 L. 1609 : 16

But others equally concerned in the Adjustment of this Loss,
 proved very clearly, that if they had once admitted the erroneous
 Valuation of 11 Pence *per* Livre from the *French* Islands, ex-
 clusive of the Premium, to be right, the Account adjusted in
 the Manner above must infallibly be wrong.

N°. B.

For as *H. L.* on the foregoing Sum of L. 1491 : 17

at the Rate of 98 *per* Cent. would receive no
 more than - - - - - L. 1461 : 16

And deducting therefrom the Premium he paid at

$36\frac{3}{4}$ *per* Cent. being - - - 548 : 3

He would remain with only the Sum of - - - L. 913 : 13

And by that Means fall short of the Value that
 was on board - - - 171 : 7

L. 1085

But

CASE III. But it is very clear, that in order to recover *L. 1085*
 N°. C. in full, *H. L.* must have insured at $36\frac{1}{4}$ per Cent.
L. 100 for every - - - *L. 61 : 5*

that is, for *L. 1085*---*L. 1771 : 8*, and so might
 recover at 98
 per Cent. *L. 1736*

And have a Return
 of Premium on

128 : 12, which at $36\frac{1}{4}$
 per Cent. is *45 : 12*

L. 1900

L. 1781 : 12

For, deducting from the above *L. 1736* which he is to receive, *L. 651* (being the Premium on *L. 1771 : 8*, at $36\frac{1}{4}$ per Cent.) it leaves him neat *L. 1085*, and is an incontestable Proof that it ought so to be.

In short, after Abundance of Arguments *pro* and *contra*, this last Account was admitted to be quite exact; and to the best of our Knowledge was the first that was ever settled in *London* in that Manner; which has been followed ever since, and is now become the general Custom.

C A S E IV.

CASE IV. *Shewing in what Manner the Account of a Return of Premium is to be made out, on an Insurance made from Vera Cruz to Cadiz on Silver, when the Quantity expected has not been shipped.*

IN the Year 1738 *I. E.* in *London* had insured *L. 2000* Sterling for his own Account, either Gold or Silver, expected by the *Assogue* Ships in the Year 1740, from *Vera Cruz* to *Cadiz*. On their Arrival it was found, that no more than 4000 *Mexican* Dollars were sent for his Account. The Question then was, for how much of the *L. 2000* the Premium should be returned?

The Assured calculated as follows:

There

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CASE IV.

Nº. A.

There were registered	-	-	Dollars 4000
Out of which is paid,			
For Freight	-	1 $\frac{1}{2}$	
Maestra de Plata	-	$\frac{1}{2}$	14 $\frac{1}{2}$ Dol. per Cent.
Ordinary Indulto	-	5	Dol. 580
Marina	-	4	
Consulage, and for the			
Church	-	1	
Donativo	-	2 $\frac{1}{2}$	
Per Almirantage	1 per Mill.	4	
Despacho	-	2	
Carriage from St. Andro			
to Reynossa a 9 Rp ^{ta} .		4 : 4	
Carriage from Reynossa to Cadiz			
of 3309 $\frac{1}{2}$ Dol. a 1 $\frac{1}{2}$			
Commiffion at Reyn		1 $\frac{1}{2}$ 57 : 7	
Ditto at Cadiz of 3251 $\frac{1}{2}$ Dol.			
a 2 per Cent.	-	64	
			712 : 3

Dollars 3287 : 5

Which at 10 $\frac{1}{2}$ Rp^{ta}. make - Rp^{ta}. 34931

and at 40 Pence per Dollar L. 727 : 14 : 7 Sterl.

And accordingly the Assured pretended to have the Premium returned of 1272 : 5 : 5

L. 2000 - Sterl.

To which the Assurers objected, that as there were actually Nº. B.
4000 Dollars on board, which were each worth Rp^{ta}. 10 $\frac{1}{2}$, this
whole Sum, being Rp^{ta}. 42500, or 5312 Dollars, 4 Rp^{ta}. could
have been demanded of them in case of Loss, making at
40 Pence per Dollar - L. 885 : 8 : 4

And that it was customary besides, to add the
Premium to the Value insured, at 5 per Cent. 44 : 5 : 5

L. 929 : 13 : 9

Consequently of the L. 2000, the Return
ought only to be made on - 1070 : 6 : 3

L. 2000
" Now

CASE IV. " Now in order to decide this Difference, it must be premised, that when no particular Valuation is made of any Goods insured, no more can then be demanded of the Insurers, than what the Thing so insured is actually worth to the Assured, or would have produced had it arrived in Safety."

And though it is notorious, that the Dollars which come registered from the *Spanish West-Indies* are worth at this Time $10\frac{1}{2}$ Rpta. in *Old Spain*, yet are they not so till delivered free on Shore there, which cannot regularly be done, without deducting

2 per Cent. for Freight and Maestre de Plata.

9 ditto for Indulto and Marina.

1 ditto for Consulage and the Church.

1 per Mill. for Almirantage.

And when it is for Account of a Foreigner,

2 per Cent. for Commission to his Correspondent at *Cadiz*.

Consequently each register'd Dollar is worth so much less to the Merchant at *London*, as these several Sums amount to, which are to be deducted from the $10\frac{1}{2}$ Rpta. Because the Captain, the King, the Consul, the Factor, &c. have a Right of retaining their Dues.

N. D. Though it be on the other hand customary to add the Premium of Insurance to the Value of the Goods shipped, yet this ought only to take Place, when the Value of the Goods in ready Specie from one Place to another can be ascertained by a regular Course of Exchange, by which Means such Money can be remitted in Bills of Exchange, without running any Risk of the Sea.

N. E. But a Difference is to be made when the Reduction of the Goods from the *Spanish* or *Portuguese West-Indies* is regulated by the Value of such Money, which is itself brought from thence in Specie, when the Risk of the Sea must be run on the same, as well as on the Goods, in which Case an Addition of the Premium is not allowed. In the Case before us therefore; there seems not to be a sufficient Reason on the Side of the Insurer to put a greater Value on the Dollar now the Premium is to be returned, than what could justly have been demanded of him for the same in Case of Loss. On the other Hand it would be wrong on the Part of the Assured, if he deducted the accidental extra Charges of

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of $2\frac{1}{2}$ per Cent. Donative, 9 Rp^{ta}. for bringing from *St. Ander*, and CASE IV.
 $1\frac{1}{2}$ per Cent. for Expences at *Reynosa*, &c. for no body could have
 thought of those Charges had the Ships been lost; in order then
 to make a true Account, it ought to be stated in the following
 Manner;

There were registred, - - - Dollars 4000

To be deducted

For Freight, Indulto, Consulage, and the
 Church, as above specified, at 12 per
 Cent. - - - - - 480

Almirantage at 1 per Mill. - - - 4

Despacho - - - - - 2

Commiffion at *Cadiz*, when it is for Foreign-
 ers Account - - - - - 70 2

556 2
 Dollars 3443 6

At $10\frac{1}{2}$ Rp^{ta}. at 40 Pence per Dollar - £ 762 5 9

Upon this Footing the Return of the Pre-
 mium to be made is for - - - - - 1237 14 3

£ 2000

And in this Manner the Affair was then adjusted.

Here a Difference is to be observed, that when the Silver comes
 to *England* by the Way of *Jamaica*, then the Value of such a
 Dollar of $10\frac{1}{2}$ Rp^{ta}. is to be calculated so much higher as it costs
 less Freight and Charges to bring them that Way: Or if such
 Silver is valued at the Course of Exchange, at which Bills are
 remitted at the same Time from *Jamaica*, then the Premium of
 Insurance may be added thereunto. Another Question is, how
 high the Value of such a Dollar may be calculated in respect to
 the Insurers, when the same come unregistred from the *Spanish*
West-Indies, and there is paid for them as usual 4 per Cent. for the
 ordinary Carriage and Freight, and 4 per Cent. more, to clear and
 fetch them from on board? The Answer is: That altho' such a
 Dollar costs the Owner but 8 per Cent. Charges in this Manner,
 yet, in respect to the Insurer, it ought to be looked upon as if it
 had come registred, since it is reasonable that this Difference
 should be reckoned for the Risk of being contraband, which pro-
 perly concerns the Owner thereof only, and with which the In-

N°.F.

Cases of Insurances.

surer has nothing to do. But to avoid all Disputes in such Cases, the best Way is to have the Dollars valued at a certain Price in the Policy.

C A S E V.

Shewing how, upon the Loss of a Spanish Silver Flota, the Charges of Salvage were divided, partly as a general Average upon the Treasure of the whole Fleet, partly as a particular Average upon each Ship, and partly upon each Species of the Goods saved.

CASE V. **I**N the Year 1733, the *Spanish Silver Flota*, consisting of 4 Men of War, 14 Merchantmen, and 1 Advice Boat, which was commanded by General *Don Rodrigo de Torres y Morales*, in their Voyage from *Vera Cruz* and *Havanna* to *Cadiz*, in the Mouth of the Channel of *Bahama*, met with a violent Hurricane, which drove them on the small Islands called *Los Martyres y los Cayos de Matacumbe*, and they were all cast away and sunk upon the Sands and Rocks there, except one King's Ship, one Merchantman, and the Advice Boat.

Under this terrible Disaster, it was of peculiar Advantage to all that were concerned in the Treasure, that it happened in a Country which was not inhabited, where there was no Apprehension of plundering or killing by the Inhabitants, otherwise too frequently practised, nor of Embezzlement or Desertion of the Sailors, besides that the Salvage was entrusted to such Persons as acquired no small Reputation by the same. For a lasting Memorial whereof here follows an Extract of the Account and Repartition of all the Charges of Salvage upon the Treasure and Goods saved, as printed by them at *Cadiz*;

N^o. A.On the *Capitana* called *El Rubi*,

Paid for Freight of the Vessels which carried what was saved to the *Havanna*.

For the Bilander N^o 2. called *la Gallarda*
to P---- de E-----, she carried 415

Chests of Silver - - - Dollars 700

For the Galliot N^o 3. called *St. Joseph y*

las

Cases of Insurances.

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CASE V.

<i>las Animas</i> , which carried 69 Serrons of Cochineal to T---y D--- G--- -	250
For the Pacquet Boat N° 4. called <i>Nra. Sa. de los Dolores</i> , which took 4 Chests of Silver, and 4 Serons of Cochineal on board, out of the <i>Capitana</i> -	32
For the Bilander N° 7. called <i>S. Francis- co Xavier</i> , which carried sick Passen- gers and Trunks out of this Ship -	300
For Ditto, on a second Voyage, when she brought 43 Serons of Cochineal, and 7 ditto of Indigo - -	250
For the Bilander N° 10. <i>S. Francisco Xa- vier y las Animas</i> , for 188 Chests Sil- ver, and 3 Chests Theforeria -	900
For Ditto - - -, on a second Voyage, with 299 Chests Silver, 8 ditto <i>de las Andas de la Virgen</i> , 1 Chest <i>de Achote</i> , 1 with Linnen, 1 with <i>Russia</i> Hides, 1 with Tobacco, 1 with Vanillas, and 2 with Bucaros - - -	600
For the Bilander N° 11. <i>Nra. Sa. de la Merced</i> , for 200 Chests Silver, and 24 Plates of Copper - - -	900
For ditto N° 11. having brought among the rest 33 Serons Cochineal, for the <i>English Assiento</i> Company, for which she demanded no Freight.	
For the Bilander N° 12. <i>Nra. Sa. del Car- men</i> , for 112 Chests Silver -	250
For ditto, for 12 Chests with fundry Things, 1 Chest with Flasks, and 10 Serrons Iron Ware - - - - -	36 : 2
For the Bilander N° 14. <i>Santa Cruz de la Parra</i> , to carry over some of the People - - - - -	200
For the Brigantine N° 15. called <i>El Juan</i> for 300 Chests Silver - - - -	1300
For ditto, the second Voyage, for 197 Serrons Cochineal, 4 Chests Indigo,	

5 Chests

Cases of Insurances.

CASE V.

5 Chests Silver, and 48 Chests wrought Plate, with one Barr of Silver	- - -	968 : 3
For the Bilander N ^o . 24. <i>La Philipa</i> , to bring over some People	- - -	200
For the Bilander N ^o 25. <i>La Paz</i> , for 400 Chests Silver	- - -	1000
For ditto, on a second Voyage, 4 Chests Silver Coin, 1 Chest wrought Plate, 215 Serons Cochineal, and 150 Cakes of Copper	- - -	995 : -- $\frac{3}{4}$
For ditto, the third Voyage, for 128 Serons Indigo, and 400 Cakes of Copper	- - -	500
<i>Paid for Diving Charges.</i>		
For 1898 Chests of coined Silver, each of 3000 <i>Dollars</i> , make 5694000 <i>Doll.</i>		
At 1 <i>per Cent.</i> as by Agreement	- - -	56940
For 25 Chests ditto, of 3000 <i>Dollars</i> , at 1 <i>per Cent.</i>	- - - - -	750
For 4 Chests coined Silver of 3000 <i>Dollars</i> by particular Agreement at 4 <i>per Cent.</i>	480	
36 Serons Cochineal	- - -	72
		552
For 652 Parcels Cochineal, and Indigo, at 2 <i>Dollars</i>	} 1689	
55 Chests wrought Plate, at 7 <i>Dollars</i>		
Deduct the Overplus charged above on 4 Chests Silver	360 : 7	
		1328 : 1
		<i>Dol.</i> 59570 : 1

N^o. B.

From which Sum, so much as is equivalent to the Silver for the King, must be deducted in this Account, and carried afterwards among the general Charges, because at a Meeting of the Merchants it was agreed to keep the King harmless

7075 *Dol.* 52495 : 1
For

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CASE V.

For Salvage to the Ship's Crew.

To the Sailors it was agreed to give
49500 Dollars in the Whole, for their
Trouble and Assistance in the Salvage;
of which Sum, according to the Di-
stribution that has been made, there is
equivalent,

To the Silver by the *Capi-*
tana, - *Dol.* 18990 : 5

To the Cochineal and In-
digo - 2121 : 5

21111 : 5

Want or Loss on the Silver which was re-
gister'd for Particulars.

For 12132 Dollars, 4 Rials, which the
Commerce in general is answerable
for, according to a Declaration of the
Maestro de Plata - -

12132 : 4

Charges which concern the Silver only.

For Carriage and Warehouse Rent, with
other Charges on the Silver out of the
Capitana, except upon the King's Sil-
ver, which have been reckoned a-
mong the general Charges -

1207 : 5

Expences in curing of the Cochineal.

For drying, &c. of 4145 Arrobes, 23 lb.

5 ounce. wet Cochineal - -

3377 : 1 $\frac{1}{4}$

(is 6 Rials $\frac{3}{4}$ for each Arrobe)

Charges on the Indigo.

Paid for 995 Arrobes. 4 lb. Indigo makes
on each Arrobe 1 $\frac{1}{4}$ Rpta. -

171 : 0 $\frac{1}{4}$

P R E S E N T S.

To divers Seamen, for assisting in the
Salvage, according to a Writing of
Don *Luis de Miranda* -

5840

Further Want and Loss on the Silver.

Paid for Want on some Chests of Silver
to sundry Persons. - -

208 : 4

Fur-

Cases of Insurances.

CASE V.

Further Charges on the Silver.

	For so much of the Carriage and Portage of the Silver falls to this Ship's Account	218 : 4
	For bringing the Silver out of the King's Custody, as above	114 : 7
	For <i>el Eslingaje</i> of 1748 Chests Silver, register'd for Account of Particulars, to the <i>Contra Maestro</i> of the <i>Capitana</i>	218 : 4
N ^o . D.	(The King's Silver bears none of these Expences.) For the Proportion of the general Charges, which falls on the Value of every Thing that was saved, and was the Property of private Persons,	
N ^o . E.	Upon the Silver at $9 \frac{1}{4}$ Rpta. per 100 Dollars	Dol. 64082 : 2
	Upon the Cochineal at $9 \frac{1}{4}$	1291 : 5
	Upon the Indigo at $9 \frac{1}{4}$	44 : 4
		65428 : 3

Dol. 171869 : 4 $\frac{1}{2}$

Havanna, the 21st of April, 1734.

Don JOSEPH DIAS DE GUYTIAN,
Don MATTHIAS BUSTILLO Y GARCIA,
Don JUAN JULIAN DE MONSALVE,
Don JUAN FELIX DE ANDRADE,
Don JOSEPH DE ESCURDIA.

Extract

Extract of the Account of the Charges to be divided upon the Silver, the Fruits, and other Effects of the Fleet that was lost, in general.

Havanna, in the Years 1733, 1734.

FOR the Purchase of an Advice-Boat
to carry an Account to the King, and
the College of Commerce at *Cadix*, of
the Accident that had happened, *Dollars* 9000
For Expences at the solemn Proceſſion
with an Image, called *la Santissima*
Virgen del Rosario - 971
For Expences of a Feaſt of Thankſgiving
kept in Honour of her during eight
Days - - - 1435 : 4
For a Pilot-Boat to carry Advice of the
Shipwreck from *los Cayos* to the *Ha-*
vanna - - - 12 : 4
For Proviſions furniſhed by the King's
Officers at the *Havanna* to the *Capi-*
tana, the *Almirante*, and to the other
Ships loſt, and for the Hire of a Veſſel,
which was ſent to the Viceroy in
New Spain : Likewise for victualling
and fitting-out the Advice-Boat for *Old*
Spain - - - 46721
For Proviſions furniſhed by one of the
Merchants, for his own and other
Paſſengers Subſiſtence on the Voyage
from *Matacumbe* to the *Havanna* 14
For petty Charges to unload ſome of the
Merchandize which came by the King's
Ships - - - 44 : 3½
For Proviſions ſent to *los Reales* - 671 : 6
Paid to the Sailors in full Satisfaction for
the Salvage of the whole Treafure and
the Fruits 49500 *Dollars* in all, where-
of belongs to this Account - 12231

Nº. F.

CASE V.
N^o. G.

For Charges, and Decrease or Want in the Royal Capital, which the Chamber of Commerce have agreed to indemnify	- - -	2950 : 3 $\frac{1}{2}$
For cleaning the King's Silver, as before		736 : 2
Paid to sundry Persons for giving Assistance in saving of the Treasure for the Benefit of Commerce 15735 Dollars, whereof belong to the general Charges		5500
To some others, as above	-	28400
For Carriage and Porterage of sundry Things, which ought to come into this Account	- -	54 : 2 $\frac{1}{2}$
For Part of the Wages for unloading the King's Silver out of the <i>Capitana</i>		2625 : 1
For Wages for unloading the King's Copper out of the same	- -	180
For Fees to the Divers of 727773 Dollars saved for the King's Account out of the <i>Capitana</i> , which the Chamber of Commerce have consented to bear		7075
For ditto of 5729951 Dollars out of the <i>Almirante</i> as above	-	7065 : 4
To B— de R—, Owner of the Bilander <i>Nra. Sra. del Carmel</i> , which was sent out from the <i>Capitana</i> to give a Look-out, and to fetch Water	- 300	
To M— de T—, Owner of the Bilander <i>Sant Andero</i> , which carried the Person to the <i>Havanna</i> , that was to acquaint the Governor and the Rest of the King's Officers with the Shipwreck	300	
For a Bilander <i>S. Miguel y las Animas</i> , to carry over the Materials and Effects of several Ships, whereof the <i>Capitana's</i> Share	- - - 491	
To Don N— de A—, Owner of the Bilander <i>la Paz</i> , who as soon as he saw the Misfortune of the Fleet, sailed directly to the <i>Havanna</i> , to give Ad-		

N^o. H.

vice

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CASE V.

vice thereof to the Governor, and served as a Guard to the King's Men of War, and the other Ships	-	1000
To the same for carrying over the Ship's Materials and other Things belonging to the <i>Capitana</i>	-	1000
		3091
To Charges of unloading the King's Silver, Copper, and the Ship's Materials out of the <i>Almiranta</i> , and putting the same on board again	-	1719 : 3
For Carriage, Warehouse Rent, and other Charges on the King's Silver	-	334 : 7
To Don P—C—, Owner of the Bilander <i>Jesus Nazareno</i> , for a Voyage which he made to the King's Ship, the <i>Almiranta</i> , to fetch some of the Ship's Materials	-	450
To N—G—, for his Trouble about this Ship with his <i>Piragua</i>	-	200
		650
To Sundry, which assisted the King's Ships that were lost, and served for a Watch and Guard upon what was saved	-	5589 : 4
For Meat, provided by the Care of the Governor, for the Service of the King's Ships	-	1000
For sundry Provisions sent by Don J—de E—to the Ships <i>Almiranta</i> and <i>St. Francisco</i>	-	603
For cleaning the Silver Ornaments of the aforesaid Image	-	761 : 4½
For a new Vestment to adorn the same on a <i>Novenario</i> , and for Masses for a happy Voyage	-	309 : 2
For Wax Flambeaux and Lights to illuminate the same, and conduct it on board of the Ship	-	888

Nº. I.

Nº. K.

Dollars 140634 : 3 Which

CASE V. Which general Charges being divided upon the Value of every Thing saved out of all the Ships that were lost, and amounted
 N^o. L. to 11 - 541 - 524 Dollars and $\frac{1}{2}$ Rials, make for every 100 Dollars to pay 9 $\frac{3}{4}$ Rials de Plata.

Havanna, the 21st of
 April, 1734.

DON JUAN FELIX DE ANDRADE,
 DON JOSEPH DIAS DE GUYTIAN,
 DON JUAN JULIAN DE MONSALVE,
 DON MATTHIAS BUSTILLO Y GARCIA,
 DON JOSEPH DE ESCURDIA.

An Account of the Division of the Charges expended on the Capitana, amounting in the Whole to 171869 Dollars, 4 Rials. Whereof belong to the Silver, for Account of private Persons :

FOR Freight paid to sundry Bilanders
 from the Place where the Shipwreck
 happened to the Havanna Dollars 9345 : 5

Deduct so much as concerns the Indigo
 and Cochineal ;

Galiot	N ^o . 3.	69 Serons	Dol. 250
Packet-boat	4.	4 ditto	- 16
Bilander	7.	50 ditto	- 250
Bilander	11.	33 ditto	- 000
Brigantine	15.	201 ditto	- 766 : 2 $\frac{1}{2}$
Bilander	25.	222 ditto	- 825 : 4 $\frac{1}{2}$
Bilander	25.	128 ditto	- 200
			2307 : 7

Dol. 7037 : 6

For Expences of diving - 51119 : 1

For Wages to the Seamen for their Labour in the saving, unloading, and re-loading - - - 18990 : 5

For a Proportion of the Gratifications to the Ship's Officers, that assisted in the Salvage - - - 5719 : 7

For

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CASE V.

For Deficiency in the registered Silver allowed to the <i>Maestre de la Plata</i> by the College of Commerce	-	12132 : 4
For Warehouse Rent, and carrying the Silver thither from the Key	-	1207 : 5
For Deficiency found by some Persons in their Chests, which were saved	-	208 : 4
For Cartage	-	218 : 4
For Portorage to put the Silver on board again	-	114 : 7
For Essingaje	-	218 : 4
For the proportionable Share of the general Charges	-	64082 : 2

Dollars 161050 : 1

Which divided upon 5 - 270 - 167 Dollars 4 Rials of Silver, N^o. M. make for every 100 Dollars in the *Capitana*, 24 Rials 15 $\frac{1}{2}$ Maravios.

On the Cochineal.

For Freight and Carriage of the Cochineal and Indigo from <i>Matacumbe</i> to the <i>Havanna</i> , 2307 Dollars 7, whereof the Proportion on 4145 Arob. 23 lb. of the first is	-	Dol. 1861 : 1 $\frac{1}{2}$
To the Divers 1376 Dol. for both, is	-	1109 : 5 $\frac{1}{2}$
To the Seamen 2121 Dol. for both, is	-	1710 : 4
For curing the Cochineal	-	3377 : 1
To the Ship's Officers for Presents 5840 Dollars ; which divided upon 5 - 368 - 495 Dollars 7 $\frac{1}{2}$ Rials makes in Proportion	-	
On 4078 Arob. 23 : 5 a 25 Dol. } 105 : 981	-	
67 - - - 60 } Dol. 6 Rials 115 : 2	-	
For general Charges on ditto at 9 $\frac{1}{2}$ Rials per 100 Dollars	-	1291 : 5

Dol. 9465 : 3

Which divided on 4145 Arro. 23 lb. is upon each Arro. 18 Rials 9 Marr. in Cochineal.

To

CASE V.

On the Indigo.

For Freight and Carriage of the Indigo and Cochineal together as above, 2307	
Dol. 7 Rials, the Proportion on 945	
Ar. 4 lb. - - - -	446 : 5 $\frac{1}{2}$
To the Divers, as above, for 688 Parcels at 2 Dollars, is 1376 Dollars -	266 : 2 $\frac{1}{2}$
To the Seamen as before Dol. 410 : 4	
For curing of the Indigo 171	
To the Ship's Officers, as before, of 4478 Dol. at 1 $\frac{1}{4}$ per Mill. 4 : 7	
For general Charges on ditto at 9 $\frac{1}{2}$	
Rials - - - -	54 : 4 $\frac{1}{4}$
	1353 : 7 $\frac{1}{4}$

N°. N.

Divided upon 995 Arrobs. 4 lb. is equal to
10 Rials 30 $\frac{1}{5}$ Mar. on each Arrobo of
Indigo - - - - Dol. 171869 : 4 $\frac{1}{2}$
Havanna, the 21st of
April, 1734.

Don JOSEPH DIAZ DE GUYTIAN
Don JUAN JULIAN DE MONSALVE,
Don MATTHIAS BUSTILLO Y GARCIA,
Don JUAN FELIX DE ANDRADE,
Don JOSEPH DE ESCURDIA.

In the same Manner the Account of the King's Ship the
Almirante was formed, and the Charges at the *Havanna*
amounted

N°. O.

Upon every 100 Dollars Silver to 20 Rials 20 Maravedis
Arrobo of Cochineal to 17 - 25
Arrobo of Indigo to 9 - 4 $\frac{1}{4}$

The Particulars of this Account were not communicated to
the Foreigners that were concerned, nor to the Insurers abroad;
but they contented themselves with being informed in general,
that this extraordinary Average of 6 per Cent. upon the Silver
had been settled between the Proprietors and the Insurers in
Cadix at 6 $\frac{1}{2}$ per Cent. viz. 3 per Cent. for Salvage, and 3 $\frac{1}{2}$ per
Cent. for conducting it home, wherewith they were satisfied
without further Enquiry.

It

Cases of Insurances.

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It was indeed something surprizing, that no more of the *Capitana* and *Almirante* lay under Water, and all that was saved out of them, was obliged to be fetched out by Divers. That Circumstance induced the foreign Insurers without Doubt to make no Objection to this Regulation, which otherwise they would in all Probability not have failed to have done against the following Articles, had they had a Sight of the Particulars of the above Account

CASE V.

971	Dollars		
1435	-	}	for the Holy Virgin.
761	-		
369	-		
888	-		

N°. P.

Although upon the Capital of 11 Millions of Dollars it amounted but to a Trifle.

And perhaps they would have taken as much Exception against the generous Behaviour of the College of Commerce, in not only taking on themselves all the Charges of Salvage for the King's Ships and his particular Treasure, but including likewise in the new Voyage, or Charge of bringing home the full Value of the 3 King's Ships: that were lost without any Consideration; the former Charges consisted in the following Articles:

2950	Dollars		
730	-	}	21066 Dollars together.
180	-		
7075	-		
7065	-		
491	-		
1719	-		
334	-		
450	-		

N°. Q.

Against the Sums of 12132 Doll. 4 and 208 Doll. 4 Rpta N°. R. which were either deficient belonging to private Persons, or else were not saved, it might have been alledged, that in as much as the Chests, in which they had been, could be distinguished by their Marks, every one ought to have stood to their own Loss.

But

CASE V.
Nº. S.

But in general all, or such like Objections of the Absent should give way to the Opinion of those, that are on the Spot, and it is but reasonable, that when in Case of a Shipwreck it is agreed by a Majority of Votes, among those, which represent the Proprietors (before a Beginning is made with the Salvage, and when it is uncertain to whom Fortune may be most or least favourable) that every Thing, which may be saved, shall come into a common Stock, that then the Right, which otherwise every Particular has, to claim his own Property, ceases. Besides as the Body of Merchants residing at *Cadix*, which were directly concerned, did approve of the above Adjustment, the Objections of those, which were only indirectly interested therein, could not avail any Thing. And so far as Foreigners had voluntarily exposed themselves with Goods for their Account, or with Assurances under the Direction of Spaniards, they must be content, to have the same decided according to Spanish Laws and Customs. (*Essay* § 9.)

When these Effects, which were saved, arrived at *Cadix*, it was to be observed, particularly with Respect to the damaged Cochineal and Indigo, that probably some of the Foreigners concerned therein, would desire, to receive their own identical damaged Goods, others on the contrary might insist on the Sale of the damaged Goods, in order to receive from the Insurers the Satisfaction for the Loss on their Goods without further Difficulty, wherefore the following Expedient was pitched upon by *N. M.* for *Don G. H.*, to sell part of the Cochineal, and to keep the Remainder at the same Prices, which the other was sold for, as appears by the following Account, others followed the same Example, and as far as appears, it met with general Approbation.

Nº. T.

Account of the Amount of Sixty Serons Cochineal, saved out of the last Flota, which arrived from *Vera Crux*, half by the Ship *Almiranta*, and half by the *Infante*, shipped by *Don A. Y. de V.* to the Consignation of *Don G. H.* who deposited them in my House as soon as they were delivered to him, out of the Warehouses, and there they were viewed by two Persons well versed in Trade, and what related to the Weights and the Charges at the *Havanna* (an original Account whereof he delivered along with them) was by them settled according to

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to the Testimonies of the *Escrivano de la Contratacion*, and CASE V.
the Accounts of Don *J. de la C.*, the Value and Amount
being as follows:

Out of the *Almirante*

Nº. V.

Of 30 Serons registred at *Vera Crux* for 252 Arrobes 11 lb.
4 Neat, there were saved and delivered to Don *J. de la Cour*
at the *Havanna*

185	Arr.	5 : 13	quite damaged
11	-	11 : 8	half damaged
24	-	3 : 15	found

in 34 Serons 220 Arr. 21 : 4 Neat.

At *Cadiz* there were found to be 29 Serons entirely damaged,
weighed :

Nº.	1 :	7	Arr.	11 :	10
	3 :	6	-	22 :	12
	4 :	6	-	22 :	8
	7 :	6	-	23 :	6
	8 :	6	-	12 :	-
	13 :	6	-	11 :	14
	15 :	6	-	- :	6
	16 :	6	-	14 :	1
	17 :	6	-	11 :	14
	18 :	6	-	9 :	8
	19 :	6	-	10 :	10
	20 :	5	-	23 :	8
	23 :	6	-	4 :	10
	27 :	6	-	12 :	5
	29 :	5	-	6 :	15

Nº.	31 :	6	Arr.	9 :	8
	24 :	7	-	11 :	2
	32 :	6	-	13 :	14
	33 :	7	-	5 :	8
	37 :	6	-	- :	-
	42 :	6	-	- :	-
	43 :	6	-	14 :	14
	44 :	6	-	7 :	12
	45 :	6	-	9 :	14
	46 :	6	-	1 :	6
	47 :	6	-	19 :	-
	48 :	6	-	2 :	12
	51 :	6	-	11 :	2
	52 :	6	-	19 :	12

91 Arr. 1 : 8

96 Arr. 22 : 15
91 - 1 : 8

187 Arr. 24 : 7

Tare 1 - 13 : 1

186 Arr. 11 : 6

Which being opened and examined one after another in the Nº. W.
Presence of Don *J. J.* and of Don *J. J. de M.*, 7 of the Se-
VOL. I. Q rons

Cases of Insurances.

CASE V. rons were found something less damaged, than the remaining 22 Serons, and the said two Persons being sworn Brokers having drawn Samples out of them, and used their Endeavours to sell them, they reported, that the Price for those, which were least damaged was 86 Dollars, at which Price part thereof was actually sold to Mr. L. C. and to Don H. E., and for them that were the most damaged 65 Dollars, at which Rate some of it was likewise disposed of to Mr. B. D. de G. and Don H. E., accordingly the Account was made up:

of 7 Serons, cont.	46 Arr.	10 : 5 a 68 Doll.	<i>Rpta</i> 25248
22 - -	140 -	7 : 1 a 56 -	- 62846
	186 -	17 : 6	

2 Serons partly damaged, weighed

N^o. 2. 7 Arr. 7 : 14

41. 3 - 20 : 12

11 Arr. 3 : 10

Tare - 2 : 12

11 Arr. - 14 sold to Mff. L.
and V. H. a 70 Duc.

8491

3 Serons found, which weighed at Cadix

N^o. 10. 7 Arr. 14 : -

35. 7 - 8 : 8

39. 6 - 12 : -

21 Arr. 9 : 8

Tare - 4 : 2

21 Arr. 5 : 6 a 90 Duc.

21000 : $\frac{1}{2}$

Rp. 117585 : $\frac{1}{2}$

CHARGES.

Cases of Insurances.

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CASE V.

CHARGES.

To the Divers in Plata doble 504 Doll.

$3\frac{1}{2}$ R. a 126 per Cent.

Rp. 5085

Freight of 244 Arr. 11: 10 a $9\frac{1}{4}$ Rp.

2200 $\frac{1}{2}$ R.

Doll. 220

KING'S DUTIES.

185 Arr. 5: 13 a 54 Doll. Rs. 80020

11 11: 8 a 75: $1\frac{1}{2}$ - 6890

24 3: 15 a 84: $4\frac{1}{2}$ - 16342

Rs. 103252

are Dol. 10325: $1\frac{1}{2}$ with the Aug-
mentation in the Project from 82
to 100 Duc. are 12591 $\frac{1}{2}$ Dol. a 5
per Cent. - - 629: 6: 5

Guards of the Coast for 10325 Dol.

$1\frac{1}{2}$ a 4 per Cent. - -

413: 0: 5

1262: 6: 15

Deduct from 504 Dol. $3\frac{1}{2}$ a 10 $\frac{1}{2}$ -

52: 9: 22

1209: 6: 27

a 10 Rs. - - - Rpia. 12096 $\frac{1}{4}$

Freight of the second Embarkation.

For 196 Ar. 17: 5 a 25 Dol. Doll. 4917: 2

24 3: 15 a 60 - 1449: 4

Doll. 6366: 6

a $3\frac{1}{2}$ per Cent. Dobles -

222: 7

2228 $\frac{1}{4}$

Consulage a 1 per Cent. in current

Money - - -

63: 5

509

To the Church a $\frac{1}{4}$ per Cent. -

15: 7

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Rpia. 20046 $\frac{1}{2}$

Q 2

Ac-

Cases of Insurances.

CASE V. According to the original Account of Don *J. de la C.* the Charges at the *Havanna* upon 371 Arro. 14 lb. of Cochineal, amounted in the Whole to 156 Dol. 3, which upon 220 Arr. 8 : 9 is equivalent to 92 Dol. 6.

	a 126 per Cent.	Rs. 934 $\frac{1}{2}$
For Dispatches at the Custom-House	-	16
For the necessary Certificates	-	12 $\frac{3}{4}$
For Warehouse Rent	-	172
For Brokerage of the Inspection, and of the Sale, a $\frac{1}{4}$ per Cent.	-	587 $\frac{3}{4}$
For Commission of the Sale, a 2 per Cent.		2351 $\frac{3}{4}$
		24121 $\frac{1}{2}$

Remain for the nett Proceed *Rpta.* 93464 $\frac{1}{2}$

Nº. W: Which, after deducting the Charges and Average, being divided upon 252 Arr. 11 lb. 4, produces for each Arrobe 370 $\frac{1}{4}$ *Rpta.*

Out of the Patache called *el Infante*, for 30 Serons which were registered at *Vera Cruz* for 245 Arr. 3 lb. neat, were delivered to Don *de la C.* at the *Havanna*, 19 Serons weighing 147 Arr. 18 : 1 neat, which 19 Serons weighed at *Cadix*

Nº. 5 : 7 Arr. 21 : 12	
6 : 8	7 : 2
9 : 7	17 : 8
11 : 8	3 : 12
12 : 7	18 : 13
14 : 8	1 : 8

47 Arr. 20 : 7

Nº. 34 : 7 Arr. 18 : 2	
36 : 8	1 : 8
38 : 7	15 : 8
40 : 8	12 : 6

31 Arr. 22 : 8

47 20 : 7

48 22 : 3

23 16 : 7

152 Arr. 6 : 9

Tare a 22 oz. 1 1 : 2

151 Arr. 5 : 7

Nº. 21 : 7 Arr. 15 : 4	
22 : 8	10 : 6
25 : 6	17 : 0
26 : 9	1 : 7
28 : 8	5 : 4
30 : 8	22 : 14

48 Arr. 22 : 3

Nº. 49 : 8 Arr. 11 : 0	
50 : 7	5 : 7
53 : 8	0 : 0

23 Arr. 16 : 7

Which

Cases of Insurances.

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Which having been examined, as abovementioned, there were CASE V.
found

11 Serons less damaged

87 Arr. 19 : 4 a 68 Dol.	Rp. 47746 $\frac{1}{2}$
8 ditto 63 11 : 3 a 56	- 28424 $\frac{1}{2}$
	76171

CHARGES.

For the Divers 394 $\frac{1}{2}$ Dol. at 126	
per Cent. Rials	- 3962
For the King's Duties of 147 Arr.	
18 : 1, at 54 Dol. 63816 Rials, are	
6381 Dol. 5, with the Augmenta-	
tion from 82 to 100 Duc ^s . make	
7782 Dol. a 5 per Cent.	- Dol. 389:1:12
For Guards of the Coast 6381 Dol. 5	
a 4 per Cent.	- 255:2:21
For Freight of 160 Arr. 23 : 1 a 9	
Rials	- 144:8:10
	789:2:9
Deduct 10 $\frac{1}{2}$ per Cent. from 392 $\frac{1}{2}$ Dol.	41:2:23
	747:9:20
a 10 Rials	- - 7479 $\frac{3}{4}$
	11441 $\frac{3}{4}$

Freight of the second Embarkation	
for 147 Arr. 18 a 25 Dol. are 3693	
Dol a 3 $\frac{1}{2}$ per Cent. doble 128	
Dol. 3	- - - Rp. 1283 $\frac{1}{2}$
For Consulage and the Church, in	
current Money, Dol. 46 : 1	369
According to the original Account of	
Don J---. de la C---, for 371 Arr.	
14 lb. 156 Dol. 3, is equal for 151	
Arr. 5:7 to 63 Dol. 5, Plata doble	
a 126 per Cent.	- - 641 $\frac{1}{2}$
Dispatches at the Custom-House and	
Certificates	- - 30 $\frac{1}{4}$
Warehouse Rent and Portorage	99

Bro-

Cases of Insurances.

CASE V. Brokerage of the Inspection and Sale
 a $\frac{1}{2}$ per Cent. - - - 380 $\frac{1}{2}$
 Commission of the Sale 2 per Cent. 1523 $\frac{1}{2}$
 15770

Remain for the neat Proceed Rp. 60401

Nº. X. Which, after Charges and Average deducted, being divided upon 245 Arr. 3 lb. make 246 $\frac{1}{2}$ Rpta. for each Arrobe.

Cadiz, December 15, 1734.

N— M—.

In London there had been Insurance made with the R--- E---- C°. for £. 3000 Sterl. upon Returns expected from Don A. Y. de V. for Don G. H. by the *Capitana*, and *Almirante*, half by each; and in the Policy were declared the Marks and Numbers of the Goods sent out, as well as what Interest the Assured had in them, and from whence these Returns were to proceed; by which Means 'it was sufficiently demonstrated, that the Proportion of the Cochineal shipped by the said V. for the Sum insured, was

of 10 Ser. 86 Arr. 18: 6 $\frac{1}{2}$ 30 Arr. 5: 6 a 83 $\frac{1}{2}$ Dol.

50 411 23: 14 117 17: 7 a 89 $\frac{1}{2}$ Dol.

(from which 6 Dollars per Arrobe were deducted for the buying it at Vera Cruz on Time)

therefore of 497 Arr. 16: 20 $\frac{1}{2}$ we reckon

all the above 147 Arr. 22: 13 a 83 $\frac{1}{2}$ Dol. Dol. 12350: 5 $\frac{1}{2}$

Charges - - - 100: 1 $\frac{1}{2}$

Dol. 12450: 7

Commission of buying at Vera Cruz a 4
 per Cent. - - - 498

12948: 7

Further for the usual Freight and Indulto from thence a 11 $\frac{1}{2}$ Dol. - 1489

Dol. 11459: 7

Which Dollar were at that Time worth in Cadiz a 10 Rials Rpta.

Rp. 114597

Con-

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Consequently for half the Interest which came by the *Almiranta*, as aforesaid, the prime Cost of 73 Arr. 23 lb. 14 $\frac{1}{2}$, was

Rpta. 57298 $\frac{1}{2}$

But as they arrived damaged, and according to the above Account produced only 370 $\frac{1}{2}$ Rpta. per Arr. is

27382

the Loss to be demanded would be - Rpta. 29916 $\frac{1}{2}$
which is 52 $\frac{1}{2}$ per Cent. upon the first Cost.

No. Y.

In Opposition hereunto Mr. Gr. required on Behalf of the R. E. C^o.

First, The real Cost at *Vera Cruz*, with all Charges delivered on board.

Secondly, To know the Difference in the Weight between *Vera Cruz* and *Cadiz*, and was of Opinion

Thirdly, That the C^o. was to be charged with the Expences of Salvage only, but not with the ordinary Charges.

Fourthly, That the Loss on the *Cochineal* ought to be calculated in Proportion to the Prices, at which it might have been sold if found, and which it had fetched now it was damaged.

Fifthly, That for what was wanting in Weight, so much as the first Cost thereof amounted to, ought to be reckoned.

Now in order to form the Account according to the C--y's own Principles, it was first proved by Attestations upon Oath from Merchants and Brokers, that the ordinary Loss, and usual Waste in the Weight between *Vera Cruz* and *Cadiz* amounts from 2 to 3 per Cent. consequently these 73 Arr. 23 $\frac{1}{2}$ lb. if they had arrived found at *Cadiz*, would have weighed there, deducting the 3 per Cent.

71 Arr. 18, which at 90 Duc. being the Market Price at *Cadiz*, would have been worth

Rpta. 71003

But

Cases of Insurances.

CASE V. But now they were damaged, they have been sold

7 Ser.	46 Ar.	10 : 5	for 68 Dol.	-	Rpta.	25248
22	140	7 : 1	56	-		62846
2	11	14	70 Duc.	-		8491
3	21	5 : 6	90	-		21000 $\frac{1}{2}$
						Rp. 117585 $\frac{1}{2}$

Hence deduct for extraordinary Char-

ges, Bufo, or diving Charges Rp. 5085

Freight of the second Embarkation 2228 $\frac{1}{4}$

Charges of the Averages - 934

- 8247 $\frac{1}{4}$

For 252 Arro. 17 lb.

- neat Rpta. 109337 $\frac{1}{4}$

For 73 - 23 $\frac{1}{2}$

- - 31421

Consequently the Loss on

- - 71003

is - - Rpta. 39582

Nº. Z. which is 55 $\frac{1}{4}$ per Cent.

When the said Cº. saw that this Account rendered more than the former, they perswaded the Insured to accept of the 52 $\frac{1}{2}$ per Cent. at first demanded, and allowed for the £. 1500 assured on the *Almiranta* 57298 Rpta. a 40 Rlrs.

£. 1193 : 14 : 9 Average a 52 $\frac{1}{2}$ per Cent. £. 623 : 2 : 7

Deduct $\frac{1}{2}$ per Cent. - 3 : 2 : 4

£. 620 : 0 : 3

306 : 5 : 3 return'd a £. 3 : 14 - 11 : 6 : 7

£. 631 : 6 : 10

Nº. AA. Others calculating their Loss upon the first Cost, have perhaps left out the 11 $\frac{1}{2}$ per Cent. deducted here above for ordinary Freight and Indulto, and added besides to the Cost of 12948 Dol. 7 Rpta. the Premium of Assurance of 4 to 5 per cent. as it was at that Time, by which Means the Demand of Loss on the Cochineal may have been increased to 60 per Cent. See Case iv. Nº. B.

But to judge according to strict Justice, even the Addition of 4 per Cent. for Commission ought not to have taken Place here : For as each Dollar on coming home would have produced 10 Rials

Rials of Plate (which was then the Value thereof, but now is 10 $\frac{3}{4}$ Rpta.) the 4 per Cent. at *Vera Cruz*, as well as the Premium of Assurance, Freight and Indulto, must have been deducted from those Dollars, and the Proprietors would have received so much less: Which (as is shewn more at large in § 40 of these Essays, and in the 4th Case) is not always so readily discerned by every Body on such Occasions. CASE V.

The Calculation of this Loss, however, should in Equity have been settled according to the Difference betwixt the Market Prices of the damaged and sound Cochineal: And then the Question would have been, Whether the Insurers were obliged to make good the Loss at 90 Ducats, or only at 85 Duc. because the Price of sound Cochineal was before the Arrival of the Flota no more than 85 Duc. and the Rise of it to 90 Duc. was occasioned only by Reason that much the greatest Part of the Cochineal by this Flota came home damaged. N°. BB.

It is a decided Point, that an Assurer has nothing to do with any Conjecture, or Profit upon the Goods, or ought to contribute more in the Calculation towards the Loss on any Goods, than what they cost, or what he has insured upon them, as the Ordinance of Assurances for the City of *Hamburg* very justly expresses, *Tit. XXI. Art. 14. N°. 988*, in the following Words: "If it should appear that on a public Sale there was a Surplus of any Profit and Advance above the Cost, then the Proprietor is to bear his Proportion of the Average on such Advance." N°. CC.

Upon the nicest Scrutiny, the Loss on the abovementioned Cochineal ought to have been calculated in the following Manner: N°. DD.

CASE V.

73 Arrobs. $23\frac{1}{2}$ lb. (Weight of Vera Cruz)
would have weighed at Cadiz, if they
had arrived sound, 71 Arrobs. 18 lb.
at the Price of 85 Duc. - *Rpta.* 670584

To be deducted,

For Freight of 73 Arr. $23\frac{1}{2}$ a 9 *Rpt.* 666Indulto a 84 Dol. $4\frac{1}{2}$ 49020, 5002

Dol. 6100 Dol. a 5 per Cent. 3050

Guarda Costas, a 4 per Cent. 2000

Consulage, a 60 Dol. a 1 per Cent. 355

The Church, a $\frac{1}{4}$ per Cent. - 89

Petty Expences, a 8 Rpta. - 72

Brokerage, a $\frac{1}{2}$ per Cent. - 33 $\frac{1}{2}$

Commission, a 2 per Cent. - 1341

7606 $\frac{1}{2}$ *Rpta.* 59452

But now they came home damaged,
these 73 Arrobs. $23\frac{1}{2}$ lb. produced
only at 370 $\frac{1}{2}$ Rpta. - - -

27382*Rpta.* 32070makes the Loss on *Rp.* 59452, to be $53\frac{1}{2}$ per Cent.

To the Cost of the above 147 Arr. 22 : 13, the 4 per Cent.
ought not to have been added, but only to have been
reckoned - - -

Dol. 12450 : 7Deduct the $11\frac{1}{2}$ per Cent. Freight and Indulto1431 : 7*Dol.* 11019a 10 Rpta. - *Rpta.* 110190

The Half whereof came by to pay by the R. E. C.
the *Almirante* a $53\frac{1}{2}$ per Cent.

Rpta. 55095 at 40 Pence. £. 1147 : 16 : 5. £. 619 : 6. *Rpta.* 29723 $\frac{1}{2}$.Deduct $\frac{1}{2}$ per cent. 3 : 2

£. 616 : 4 : 0

to return the Premium of 352 : 3 : 7 a £. 3 : 14

13 : 0 : 7

£. 1500

£. 629 : 4 : 7

The

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CASE V.

The Proprietor himself to bear
on his Profit a $53\frac{1}{2}\%$ per cent. of

Rp. 4357 - - - - - 23504

59452

Rp. 32073 $\frac{1}{2}$

Difference of Fractions 3 $\frac{1}{2}$

is as above Rp. 32070

But to put this Way of calculating the Loss in a still stronger No. EE.
Light, let us suppose, that a Person at Cadix shipped for Vera Cruz 100 Casks of Wine, which, with all Charges on board, and the Premium of Assurance, amounted to 1000 Dollars; for which Sum he made the Assurance on the same. The Ship being lost at Vera Cruz, there were no more than 50 of the Casks saved, and 20 per Cent. was paid for Salvage, either in Kind, or in Money; consequently there remained without Dispute no more than 40 Casks for the Owner, and he loses 60. It should make no Difference for the Assurer, whether the 40 Casks are sold at a high or a low Price, for he ought to pay no more of the Loss, than what is proportionable to the Value, for which he did receive the Premium; consequently if each Cask had been valued at 10 Dollars, and fully insured, doubtless no more or less than 600 Dollars could have been demanded for the Casks which were lost. Supposing then that they were sold at great Profit, and that each of the 50 Casks saved fetched 100 Dollars, is

Dol. 5000

Deduct 10 Dol. for Salvage and extra
Charges - - - - -

1000

Dol. 4000

Freight from Cadix a 30 Dol. - 1200

Usual Charges - - - 80

Commission at 5 per Cent. - 200

Ditto on the Returns for 2520 Dol. at

4 per Cent. - - - 100 $\frac{1}{2}$

1580 $\frac{1}{2}$

They would have rendered neat Dol. 2419 $\frac{1}{2}$

R 2

Which

Cases of Insurances.

CASE V. Which, in Case they had all arrived safe, would have made for the 100 Casks, a
100 Dol. - - - Dol. 10000

Freight, a 30 Dol. - - - Dol. 3000

Charges - - - 200

Commiffion, a 5 per cent. - - - 500

Ditto on the Returns for 6300 Dol. a

4 per Cent. - - - 252

3952

Dol. 6048

Hence deduct the abovementioned 2419 $\frac{1}{2}$

Dol. 3628 $\frac{1}{2}$

Then as Dol. 3628 $\frac{1}{2}$ are reckoned loft on Dol. 6048, in the same Proportion are 60 on 100; and notwithstanding what was faved produced much more than the first Cost, ftill the Affurer will be obliged to pay 60 per Cent. of the Sum he has underwrote, and for which he received a Premium. For if Dol. 3628 $\frac{1}{2}$ are loft on Dol. 6048, then the Proportion of Dol. 5048, which the Proprietor had not infured, is - Dol. 3028 $\frac{1}{2}$

And the Infurer, to make good on
1000, infured - - - 600

Dol. 3628 $\frac{1}{2}$

N°. FF. Or, admitting they were fold with Losfs, and that the 50 Casks which were faved fetch-

ed 40 Dol. - - - Dol. 2000

Deduct 10 for Salvage - - - 400

40 Casks - - - Dol. 1600

Freight

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CASE V.

Freight a 30 Dol. - Dol. 1200

Customary Charges - 32

N.B. Though these are always the same, whether the Wines are sold at high or low Prices, yet here is only put a Proportion on the Price of 40 Dol. as it was above, 80 on the Price of 100 Dol. Commission a 5 per Cent. - 80

Ditto on the Returns of 288 Dol. a 4 per Cent. - 11 $\frac{32}{100}$

1323 $\frac{32}{100}$

Remains neat Dol. 276 $\frac{48}{100}$

100 Casks, if they had arrived in Safety,

a 40 Dol. - Dol. 4000

Freight, a 30 Dol. - Dol. 3000

Charges as usual - 80

Commission, 5 per Cent. - 200

Ditto on 720 Dol. Returns a 4 per Cent. 28 $\frac{30}{100}$

3308 $\frac{30}{100}$

Dol. 691 $\frac{30}{100}$

Deduct as above 276 $\frac{48}{100}$

is Loss - Dol. 414 $\frac{72}{100}$

Which Sum divided upon 691 $\frac{30}{100}$, makes again 60 per Cent.

And accordingly there might be demanded, as above, for the

1000 Dollars, at 60 per Cent. - Dol. 600

and adding thereunto the Proceed of 40

Casks saved - 276 $\frac{48}{100}$

the Assured would in this Manner receive -

Dol. 876 $\frac{48}{100}$

instead of the abovementioned - 691 $\frac{30}{100}$

and by that Means gain 185 $\frac{38}{100}$ Dollars more in not receiving the 60 Casks, than if they had been delivered in good Condition.

But then on the other Hand it is to be considered, *First*, No. GG.

That by Reason of these 60 Casks being actually wanting, the Assured

CASE V. Assured was deprived of having the Option to keep them for a better Market. Secondly, That there was no Necessity for selling them immediately at such a great Loss; and although it is otherwise allowed to be a fundamental Maxim, that an Insurer is, strictly speaking, not to be charged with any Profit or Loss arising from a Market, yet a Distinction is to be made when the Goods do not come to Market at all, and in this Instance it appears reasonable that the Assured should be entitled to demand from the Assurers the Value of these 60 Casks, not being wilfully lost, after the Rate they were insured at, and for which the Premium was paid, being for the Cost of 10 per Cask, *Dol.* 600; but whenever Goods arrive damaged, then such Loss ought not to be adjusted any otherwise than according to the Market Price at the Place they came to; and if such Market Price produces more than is insured thereupon, or more than the first Cost with the Premium amounts to, then the Proprietor is obliged to contribute his Share thereunto, as being his own Insurer; in Consideration whereof the Profit is to remain his: But if any Thing falls short, and the same is occasioned merely by the Decline of the Market, where the Goods actually arrived, then such Deficiency is not to be demanded from the Insurers; for then we think them to be discharged, either by satisfying what they fall short at the Market Price, or to reinstate them with the same Quantity of such Kind of Goods; in the same Manner as is very wisely provided in the Policy for Fire of the *London Insurance*, N^o. 1332; " If in case the Loss or Damage on the said Goods shall not be adjusted and paid as aforesaid, the Company shall provide and supply the Assured with the like Quantity of Goods of the same Sort and Kind, and of equal Value and Goodness with those burnt or damaged by Fire." See *Essay*, § 29, Page 32.

C A S E VI.

CASE VI.

Shewing that the changing any Effects shipped at Vera Cruz into others at the Havanna, does not annul the Risk of the Assurance, but that the same is not to be charged with any Thing that does not actually proceed from such Effects; as it was decided by Arbitration at Cadiz in 1734.

AMONGST the Spanish Fleet, which was lost in the Year 1733, on their Return from *Vera Cruz* and the *Havanna* to *Cadiz*, was a Ship called *Nra. Sra. del Rosario St. Antonio y S. Vincent Ferrer*, Don *Juan Joseph de Arizon*, Master, upon which the Owner Don *J. A.* had made Assurance, and in the Policy explained the Risk in the following Manner :

Upon Effects laden on board this Ship, the Hull, Keel, Tackling, and Benefits of it, from the Bay of *Cadiz* to *Vera Cruz*, during its Stay there, and on the Return to the Bay of *Cadiz*, or to the Place where the Register shall be at an End, for the Sum of 50000 Dollars. There were some Goods shipped for the said Don *J. A.* as well at *Vera Cruz*, as at the *Havanna*, which were all fetched wet out of the Water and saved; but particularly some Tobacco shipped at the *Havanna* was quite spoiled, but the Damage was not so great upon the Goods shipped at *Vera Cruz*, they consisting chiefly in *Cochineal* and *Indigo*. From whence arose this Question, Whether the Goods shipped at the *Havanna* were included in the said Assurance, as that Place was not expressly mentioned in the Policy, although it was a well-known Custom, that the Ships on their Return fill up there what they want of their Loading?

This Question, and the Dispute arising from thence, was left to the Arbitration of

Don L—— L——.
Don A—— M——, and
Don N—— M——.

On

CASE VI.

On Behalf of the Assurers it was alledged :

N^o. A.

1st. That as the Policy expresses, That the Risk shall run from *Cadiz* to *Vera Cruz*, during the Stay in that Port, and on the Return to the Bay of *Cadiz* : Consequently as they had run the Risk on the Effects, which were shipped at *Vera Cruz*, and if the Ship had been lost between that Place and the *Havanna*, they should have been obliged to pay to the Full, because the Effects shipped at *Vera Cruz* amounted to more than was insured upon them, and that therefore their Risk could only continue on the self same Effects, and not upon such as were afterwards shipped at the *Havanna*, they being of an inferior Kind, and more liable to Average and perishing.

2dly. That the Assurers ought only to be judged according to the Words of the Policy, which having clearly and distinctly determined the Risk to run on Goods from *Vera Cruz*, and where such were actually shipped, whereby the Contents and literal Meaning of the Policy was verified and accomplished, but if Don *J. A.* had an Intent and Meaning, that in this Risk should likewise be included the Goods laying at the *Havanna*, and which proceeded from a former Voyage, it should have been mentioned in express Words in the Policy.

N^o. B.

The Assureds on their Part represented : That all the Effects, shipped for this Account ought to be included in this Risk :

1st, Because the Policy says : From the Bay of *Cadiz* to *Vera Cruz*, during the Stay there, and the Return to the Bay of *Cadiz* ; and it is well known, that a Ship must observe the Orders of the Admiral, who according to Custom run into the *Havanna*, moreover that Merchantmen usually fill up their Loading there, when they do not find Goods sufficient at *Vera Cruz*.

2dly. This being the general Practice, there could be no Necessity for particularly mentioning in the Policy, that the Assurers were to run the Risk as well upon Goods, which should be shipped at the *Havanna* as upon those put on Board at *Vera Cruz*, because both are jointly included in the Risk from *Vera Cruz* to the Bay of *Cadiz*.

3dly.

3dly. That the greatest Part of the Tobacco, shipped at the *Havanna*, and which the Assurers pretend not to be included in this Assurance, lay there ready for shipping so long ago as the Time, when the Policy was underwrote, being the Produce of Money due to him from Don *E. L.* and Don *F. A. B.*, and the Remainder being bought with Gold and Effects brought thither from *Vera Cruz* in his Ship on this self same Voyage. CASE VI.

The Arbitrators decided hereupon: That as the Risk was not fixed in the Policy upon any Effects in particular, and as the Value of what was shipped at *Vera Cruz* exceeded the Sum insured, therefore the Whole ought so far to be looked upon as a Concern in common between the Assurers and the Assured, and that nothing should in particular be appropriated more to one than to the other, and consequently, that those Effects, which were shipped at *Vera Cruz*, and were afterwards changed into other Sorts at the *Havanna*, as is frequently practised, cannot afterwards be excluded from such a Community wherein they were before, for that an Assurance ought not to hinder the common Course of Trade, since Don *J. A.* had acted no otherwise in this Case, than he would have done, if he had not been insured. The Arbitrators therefore condemned the Assurers to bear in common with Don *J. A.* their Proportion of the Damage upon so much of the Tobacco, as he should prove to be the actual Produce of the Money or Effects, which were put on Board at, and brought from *Vera Cruz* thither: But as to the Damage on that Part of the Tobacco, which Don *J. A.* had at the *Havanna* before, and did not become his Property by Means of any of the Effects brought from *Vera Cruz*, they cleared the Assurers of it, because the Ship had already more than the Value insured on Board in the Voyage from *Vera Cruz* to the *Havanna*, and if she had happened to have been lost in that Passage the Assurers would have been obliged to pay to the Full, although the Tobacco, which *A.* had at the *Havanna*, would then not have been comprehended in such Misfortune. With which Arbitration both Parties appeared to be satisfied. N°. C.

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C A S E VII.

Shewing how the Value of Money and Goods from the Spanish West-Indies was calculated at London, to regulate an entire Loss, and the Return of the Premium.

ON the 18 Febr. in the Year 1744. F. S. caused an Insurance to be made in London by the Brokers F. and G. for £. 7000. Sterl. on Effects upon Register for Account of G. and J. T. at Cadiz, from Lima or any other Port in the South-Seas, to Cadiz or any other Port in Europe, where the Register shall be at an End. The Risk was declared to be upon the Ships *la Marquise d'Antin*, *Louis Erasme*, *Notre Dame de la Delivrance* and *la Lys*, or any of them.

The L. A. C. underwrote by the Broker F. for £. 5250
and some private Assurers with the Broker G. 1750

N^o. A. Three of the above Ships, viz. *La Marquise d'Antin*, *Louis Erasme* and *Notre Dame de la Delivrance* were taken by the English in their Return home: Upon which F. S. claimed the Loss from the L. A. C. and delivered his Account by the Broker F. in the following Manner:

Lost in <i>La Marquise d'Antin</i>			
$\frac{2}{3}$	of 82500 Doll. in Gold and Silver	Doll.	12692
$\frac{1}{2}$	- 22610 - assigned on the Freight of the Register		11305
$\frac{1}{4}$	- 50400 - in Cocoa, a 8 Doll.		6300
			Doll. 30297
Lost in <i>Louis Erasme</i>			
$\frac{2}{3}$	of 36500 Doll. in Gold and Silver registred		5615
Lost in the <i>N^a S^a de la Delivrance</i>			
$\frac{2}{3}$	of 4000 Doll. in Gold and Silver registred	Doll.	615
$\frac{1}{4}$	- 16000 - assigned on the Freight of the Register		2000
			2615
			Arrived

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CASE VII.

Arrived in *La Lys*
 $\frac{2}{3}$ of 4000 Doll. in Gold and Silver
 registred Doll. 615
 $\frac{1}{3}$ - 12000 - assigned for the Freight
 of the Register 1500

 2115

 Doll. 40642
 Dollars 40642 a 3s 6d £. 7114:7
 Premium a 36 $\frac{1}{2}$ per Cent. 2614

 £. 9728:7
 Deduct for 2115 Dollars, which came
 safe a 3s 6d £. 370
 Premium - - - 136

 506

 £. 9222:7

If upon £. 9728:7 were lost £. 9222:7, how much on
 £. 98? Answ. £. 92:18

But the *L. A.C.* on the other hand, after having inspected
 the original Papers, found on Board of the Prizes, made up their
 Account in the following Manner:

Lost in *La Marquise d'Antin* N°. B.
 $\frac{2}{3}$ of 82500 Doll. Doll. 12692
 $\frac{1}{3}$ of 6089 Serons of Cocoa, which were only
 found registred instead of 6300 Serons, and
 which, according to an authentick Letter from
 the Person, that shipped them, cost but 7 Doll.
 instead of 8 Doll. as was demanded, make
 for $\frac{1}{3}$ of 42623 Doll. 5327:7

N. B. The $\frac{1}{3}$ of 22610 Dollars, assigned on the
 Freight was rejected, because the Freight does not
 become the Property of a Ship, till she has earned
 the same and the Voyage is finished, neither did
 it appear by the Register, that any such 22610 Doll.

Cases of Insurances.

CASE VII.

came for Account of the said T., whereas the Policy expressly mentions upon Effects on the Register,

Remain Doll. 18019 : 7

Loft in the *Notre Dame &c.*

$\frac{2}{3}$ of 4000 Doll. - - - 615

$\frac{1}{3}$ - 16000 - upon Freight rejected for the above mentioned Reasons.

Loft in the *Louis Erasme*

$\frac{2}{3}$ of 36400 Doll. - - - 5615

Loft Doll. 24249 : 7

Arrived by *La Lys*

$\frac{2}{3}$ of 4000 Doll. - - - 615

$\frac{1}{3}$ - 12000 - not allowed as above

Doll. 24864 : 7

From which Sum, in Case the Ships had arrived in Safety, must have been deducted for Freight and Indulto 17 per Cent. - - - 4227

and then the Assured would have to receive for the Sum insured - - - 20637 : 7

Which being Dollars of 10 $\frac{1}{2}$ Rp. may be valued in *London* at 39 *d* for 8 Rp., and at that Rate

the Intrest for the £. 7000 insured, is only £. 4454 : 1 : 5
and the Premium to be returned for 2545 : 18 : 7

£. 7000

According to this the Loss on the three Ships amounts to - - - Dol. 24249 : 7

Deduct 17 per Cent. - - - 4123 : 4

Dol. 20126 : 3

a 10 $\frac{1}{2}$ Rp. and 39 *d*. -

£. 4343 : 13 : 7

Upon

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Upon £.7000 lost, £.4343 : 13 : 7 makes
on £.5250 - - - - - £.3257 : 15 : 2

Upon £.7000, the Premium to be returned
for £.2545 : 18 : 7, is for £.5250,
£.1909 : 10, a $36\frac{1}{4}$ per cent. - 692 : 3 : 10

And thus the Company would only be
obliged to pay

Upon £.5250, at the Rate of £.75 : 4 : 9
Rlrs. per cent. - - - - - £.3949 : 19

being for £.3257 : 15 : 2 Loss

1909 : 10	Premium returned
82 : 13	come safe.

£.5249 : 18 : 2.

According to this Calculation the Assured (as is observed in *Essay*, § 40. and in *Case* iv. N°. B.) would have received exactly the same for his Silver as if it had safely arrived; and though the Broker *F.* owned the Equity thereof, yet he was of Opinion the Affair ought to be left to Reference, since it was in general a Custom in *London* to add the Premium to the Cost, notwithstanding it did not seem to appear just in Regard to the Returns of Silver.

But as the *L. A. C.* insisted on their Account as above, the Broker *G.* was then employed to endeavour at coming first to an Adjustment with the private Assurers; in doing whereof he adopted the Calculation of the said Company exactly, as just in Regard to the Silver; but as to what related to the Cocoa, he was of Opinion, that since the same was worth much more in *Europe* than it cost in the *West-Indies*, it might therefore be allowed to add the Premium to the Cost, and accordingly he framed the Account as follows:

No. C.

in

*Cases of Insurances.**In La Marquise de Antin.*

$\frac{1}{3}$ of 6089 Casq. Cocoa, a 8 Dol. (see the Remarks above in the Company's Calculation) being 48712 Dol. whereof
 6089 Dol. a 4 : 4 make - £.1319 : 5 : 8
 Premium of £.2190, a $36\frac{3}{4}$ per cent. 804 : 16 : 6
 Commission at 1 per cent. - - 21 : 4 : 10
 $\frac{2}{3}$ of 82500 Dollars - Dol. 12692

In the Louis Erasme.

$\frac{2}{3}$ of 36500 - - - 5615

In Nra. Sra. de la Deliverance.

$\frac{2}{3}$ of 4000 Dol. - - - 615
 $\frac{1}{3}$ of 16000 (see the Remark above) 2000

In La Lys.

$\frac{2}{3}$ of 4000 - - - 615
 $\frac{1}{3}$ of 12000 (see what is remarked above) 1500

Dol. 23037

Deduct 17 per cent. -

3916

Dol. 19121

a 10 $\frac{3}{4}$ Rpta, and 39 Pence -

4126 : 14

£.6272 : 1

Arrived by *La Lys* - Dol. 2115

Deduct 17 per cent. - - 360

Dol. 1755

a 10 $\frac{3}{4}$ Rpta. and 39 Pence -

378 : 15

upon £.7000 - -

£.5893 : 6

is for a hundred Pounds - -

84 : 3 : 6

£.5893 : 6 a 98 per cent. £.6011 : 3 : 4

and the Premium to be re-

turned for - -

988 : 16 : 8

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CASE VII.

a $34\frac{1}{4}$ per cent. £. 341 : 3
which £. 341 : 3 divided on
£. 7000, is for 100 - - - 4 : 17 : 6

makes for each £. 100 £. 89 : 1
which the said private Assurers did pay.

According to this Example, F. S. demanded to settle the N°. D.
Loss with the L. A. C. likewise : But it remained evident enough
that it was erroneous in the Calculation of the Cocoa, and that
it was a Mistake to reduce the Value of Goods from the *Spanish*
West-Indies into *European* Money, in any other Manner than at
the Rate of what the Silver itself coming from thence actually
produced, or could have produced. For as there is no Course
of Exchange from the *Spanish West-Indies*, by which 4 s. : 4 d.
can be made for a Dollar, without running the Risk of the Sea,
it follows from thence, that such Reduction cannot be made
otherwise than by deducting the Charges of bringing it from
thence to *Europe*, being the Freight, Indulto, and Premium of
Assurance [a]. For if the Addition of $36\frac{3}{4}$ per Cent. for Premium
of Assurance on the Cocoa was to be allowed of, it would be equal
to supposing that such a Dollar could produce 7½ Shill. Besides
it is manifest that the Assurers have nothing to do with Altera-
tions in the Prices of Goods, or whether they yield Profit or
Loss ; and that frequently Goods from the *Spanish West-Indies*
turn to worse Account than Gold or Silver, and that the Assu-
red, if the Addition of such an high Premium as $36\frac{3}{4}$ per
cent. was to be admitted, might sometimes gain half a Capital
more by the Ship's being lost, than if she came home safe, and
he had received his Returns in Silver or Gold by the same.

F. S. intimated that if this Matter came to a Law-Suit, he
should demand the Payment of the full Loss according to the N°. E.
following Account :

For Loss as settled by the <i>London Assu-</i>	
<i>rance</i> Comp. - - -	£. 3257 : 17 : 7
For Premium of 5250 l. a $36\frac{3}{4}$ per cent. - - -	1929 : 7 : 6
For Commission and Policy - - -	29 : 9 : 6
	£. 5216 : 14 : 7

[a] See *Essay*, § 40.

And.

CASE VII. And as for the £. 5250, he should receive
at the Rate of 98 *per cent.* only - 5145

that therefore he had, with the Addition of the Premium, an Interest sufficient for the whole Sum.

But he making afterwards some further Concessions on his Part, and the Company being unwilling to engage in Disputes at Law, thought it preferable to split the Difference with him between the Account made up by themselves, and that settled with the private Assurers as abovementioned.

CASE VIII.

C A S E VIII.

Regulation of the gross and general Average, upon the Ship le Mentor de Bordeaux, Capt. Nicolas Elie Mée, occasioned by the bad Weather she met with on her Voyage from Bordeaux to Martinico.

AFTER she sailed from thence on the 17th of Sept. 1744, the Wind on the 29th of the same Month carried away the Sprit Sail Yard; and the Sail, which was quite new, was entirely blown to Pieces; and stove in Part of the Forecastle, carried away all the Bulk-Heads, and broke the Studding Sail-Booms, and the Main Stay.

On the 2d of *October* he met with an *English* Privateer, and was engaged with him for two or three Hours. On the 6th ditto the Wind carried away the Foremast, and was so violent, that the Ship could no longer be steered; he was therefore obliged to cut away the Mizzen Mast, which fell into the Sea, with all its Appurtenances, such as Sails, Yards, Rigging and Blocks.

On the same Day the Wind also carried the Top Sprit Sail quite away, as likewise the Yard and Fore-Sail, and the Ship was almost under Water, which forced the Captain to have the Shrouds of the Main Mast cut away, which broke into several Pieces below the round Top, whereby at the same Time all the Sails, Top-Mast, Yards, Rigging, Blocks, and every Thing else belonging to it were lost. He then ordered twelve Guns, four Pounders, with their Carriages to be flung overboard; and

and finding the Ship not to be in a Condition to pursue the **CASE VIII.** Voyage, he put into *Lisbon*, as more fully appears from the Depositions taken in due Form the 6th of *October*, on board of the Ship, and afterwards on the 19th of the same Month, before the *French Consul at Lisbon*.

Specification of the gross Average.

Extract of the Account sent by Messrs. B---. P---. C---, and Comp. at Lisbon, and approved by the Master, reduced into French Money, as follows:

New M A S T S.

N^o. A.

For a Mizzen Mast, in the Room of that which was cut away, and flung over-board	- - -	<i>Livres</i> 400
For a Main Mast, as before	-	600
For a Round Top, or Scuttle for ditto		87:10
For the Trussle Trees to the Main-Mast		69
For ditto to the Main Top-mast	-	12:10
For the Top-Gallant-Mizzen-Mast		50
For the Yard to the Mizzen-Mast	-	75
For the Top-Gallant Yard	-	75
For the flying Top-Gallant-Yard	-	45
For the Mizzen-Mast-Scuttle	-	50
For two Trussle-Trees	- -	50
For the Main-Top-Mast	- -	180
For the Main and Main-Top-Yard		240
For Buttons to the Yards, a Main-Top-Gallant-Mast, and Flag-Staff,	-	80
For making the Yards and Masts	-	197
For Spars to the Main-Scuttle, and a Main-Top-Mast	- -	60
For ditto to the Mizzen-Mast	-	50
For Pullies, Blocks, and Ramblocks		227
To the Smith, for putting the Iron-Work on the Main-Top-Gallant-Masts, and the other Tackling		320
For the Clamps or Knees to the Main-Mast	- - -	15
For Nails of different Sizes	-	47:10
		<i>Liv.</i> 2930:10

CASE VIII.

New RIGGING.

N ^o . B.	For a Shroud, weighing 800lb. calculated in <i>French Money</i>	-	Liv. 480
	For a Main-Stay, and a Scuttle-Stay, weighing 300 lb.	-	180
	For the running Shrouds of the Main-Mast and Fore-Mast, weighing 2400lb.	1440	
	For the Shroud and Stay of the Mizzen-Mast, weighing 400 lb.	-	240
	For the Scuttle and running Shroud, weighing 500lb.	-	300
			2640

New SAILS.

	For 13 Pieces Sail-Cloth for the two lower Sails	-	731: 5
	For 13 Pieces of an inferior Sort for the Top-Mast and Top-sprit-Sails	}	885
	For 6 $\frac{2}{3}$ Pieces for the Mizzen-Top, and Flying Top-gallant Sails		
	19 $\frac{2}{3}$ Pieces together		
	For 7 ditto, for the Stay and Sprit-Sails		288: 15
	To the Sail-maker, for Workmanship		602: 8
	For carrying the Cloth to the Sail-maker, and the Sails on board of the Ship		3: 12
			Liv. 2511

N^o. C.

From which to be deducted for the Top-sprit, the flying Top-gallant, the Fore and Fore-top-fails, which must come into the particular Average, and were valued by the Sail-maker *Choitard* after the Rate of Liv. 2511, which the whole cost, at

800	
	1711
	Liv. 7281: 10

New

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CASE VIII.

New Guns, Carriages, Gunpowder, in the Room of what was expended in the Engagement, Bullets, &c.

N. D.

For 12 Guns in the Place of those, which were thrown into the Sea during the Storm	- - - Liv. 1260
For 24 Days Labour to mend the Carriages	- - - 72
For Axle-Trees to them	- - - 9
For three Instruments to sweep and clean them	- - - 7:10
For Nails for the Carriages	- - - 1:17
To the Porters for carrying the Guns to the Water-side	- - - 10
To the Waterman for carrying them aboard	- - - 20
For eight round Copper-Plates	- - - 14
	Liv. 1394: 7
For 100lb. Gunpowder	Liv. 102: 11
For 25 round Bullets	- 12: 10
For 25 Cannon-Ball	- 40: 2
	155: 3
	1549: 10
For 3 Barrels of Oil, which were kept in Flasks on board of the Ship, and were broke by the falling of the Masts	30
For Duties of the Masts, Yards, Sails, Guns, Rigging, &c.	683
	Liv. 9544
Commission of Messrs. B. P. C. and C ^o . at Lisbon, who furnished the Money for the Use of the Ship a 2 per cent.	190: 17: 6
For drawing up this Regulation	48
	Liv. 9782: 17: 6
Total of the gross Average	

T 2

Which

Cases of Insurances.

CASE VIII. Which Average is to be borne by the several principal Sums N°. E. following, being the Goods shipped as well for Account of the Owners as on Freight, half the Value of the Ship, and half the Freight, viz.

List of the Cargo for Account of Messrs. C— and D—, Owners of the Cargo.

22 $\frac{1}{2}$ Tons red Wine	Liv. 5266: 5
61 Ditto red Wine from Cabors	9328: 0: 11
9 $\frac{1}{2}$ Ditto white Wine	- 1590: 18: 6
600 Barrels Flower	} 12419: 7: 3
6 Hogheads Oatmeal	
538 Casks salted Beef	- 16578: 5: 9
85 Firkins Butter,	} 2110: 6: 1
59 Half Firkins ditto	
100 Cases Mould Candles	- 1474: 19
25 Firkins Tallow	- 578: 8: 10
29 Barrels pickled Pork and Bacon	365: 18: 9
67 Anchors Brandy	- 469: 5
2 Hogheads Hams	- 851: -
161 Last Staves	- 471: 15
5 Casks Nails	- 650: 10: 9
30 Hampers with Liquors	- 183: -

Liv. 52338: 0: 10

For Mr. G—

8 Tons Wine	Liv. 1200
48 Barrels Flower	862: 12: 10

2062: 12: 10

Liv. 54400: 13: 8

For

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For the Freight, which we value in the Whole to be 260 Tons, at Liv. 200 amounting to Ls. 52000, half thereof according to the Ordinance of 1681 being - - - Liv. 26000

The Ship was insured at London in the Month of August 1744 for £. 2000 Sterl., at which Sum she was valued in the Policy, and makes at the Exchange of $d. 31\frac{1}{2}$ Sterl. per Crown Liv. 44307 French Money, and which we estimate in the Condition she was after the Average, at Liv. 30000, the half is - - - 15000

Nº. F.

41000

The whole Capital Liv. 95400 : 13 : 8

Upon which Capital of Liv. 95300 : 13 : 8, the Ayerage amounting to Liv. 9782 : 17 : 6, as above specified, being divided, comes to 10 Livres 5 Sols and one Denier per Cent. which must be born by the Parties hereafter named according to the following Account and Repartition, viz.

By the Cargo for L. 52338 : : 10 a Liv. 10 : 5 : 1 per Cent. Liv. 5366 : 16 : 6

By Mr. G. who shipped on Freight for 2062 : 12 : 10 - - - 211 : 10 : 9

By the half of the Ship and of the Fright 41000 - - - 4204 : 10 : 3

L. 95400 : 13 : 8 Liv. 9782 : 17 : 6

We the underwritten Arbitrators chosen, approved and consented to by the Parties the 27 April last, do hereby certify, that we have made this Adjustment from the Documents produced to us as afore said. At Bordeaux the 4 June 1745.

(was signed)

VIGNES.
Insurer of the Cargo.

BROUET.

Regula

CASE VIII. Regulation of the ordinary and particular Averages, which happened to the Ship Mentor of Bordeaux, Capt. Niclas Elié Mée, by violent Storms and bad Weather, which she met with on her Voyage from this Port to the Island of Martinico, as appears by the verbal Evidence and Depositions referred to in the Settlement of the gross Average, viz.

For the Share and Proportion, which the Ship is to bear of the gross Average according to the Adjustment above mentioned	£s. 4204 : 10 : 3
For the Clamps and Supports of the Fore-Castle, before the same were washed away by the Waves	45
For ditto on Board	24
For four Ribbs and Trucks for the Yards	13
For the Rails of the Quarter Deck	30
For the Crucker	72
For the Windows in the Cabin	12
For a Table in ditto	40
For the Door to the same	18
For a Pitch-Kettle	36
For 15 Days Work, by the Carpenters	45
For 25 Quintals Biscuit, which were lost	562
For 150 lb. dried Fish, spoiled by Sea-Water	36
For 150 lb. Matches for Guns, likewise quite spoiled	51
For a Bell of 55 lb. Weight, washed away by the Waves	103 : 2
For three Hen-Coops stove by the Sea	120
For the Sprit, Top-Sprit and Mizzen-Sails, which as well as the Fore-Sail, were carried away by the Vehemence of the Storm, and have been valued by Mr. Choitard, the Sail-maker, in Proportion to the Cost of all the Sails being 2511 at	800
For 400 lb. Oakum to caulk the Ship	70
For 500 Billets to smoke the Ship	£s. 92 : 10
For carrying them to the Water-side	3 : 15
For 40 lb. of Tallow	15

For

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For 58½ Days caulking	182 : 5½	187 : 15
For carrying the People a-board	5 : 10½	
Paid to the Interpreter	-	40
To Mr. <i>Ferran</i> , of the Consuls Office, for the Depositions and Copies	-	54
To Mr. <i>Amelin</i> , Vice Consul, for his Dues	67 : 15	
To Mr. <i>L'Atbicylerie</i> , Vice Consul at <i>Beblem</i>	131 : 7 : 6	
To the Custom-House-Officers, during the Time, that the Ship lay at <i>Beblem</i> , where she was detained by the Officers of Health	170	
For Duties for the Sails and for the other Articles above mentioned	-	337 : 15
Expences of the Captain and his Officers during the Time the Ship was refitting	150	

Liv. 3326 : 19 : 6

For Commission of M ^{rs} . <i>B. . .</i> , P. . . C. . . and Comp. at <i>Lisbon</i> , who furnished the Captain with the Money required for his Ship's Use	-	66 : 10 : 6
For settling this Account	-	18

3411 : 10

Total Average on the Ship

Liv. 7616 : 3

CAPITAL which is to bear this Average.

The Ship, which was insured at *London* in the Month of August 1744, and was valued in the Policy at £. 2000 Sterl. which at the Rate of *d.* 32½ Sterl. per Crown, as the Course of Exchange then was in *London*, make in French Money

N°. H.

Liv. 44307

Upon which Sum of *Liv.* 44307 Capital, the Average amounting as above to *Liv.* 7616 : 3, being divided, comes to 17 Livres 3 Sols 9 Deniers per Cent., which the Gentlemen Assurers at *London*, are to pay according to the Policy of the Month of August 1744 upon the Ship *Mentor* of *Bordeaux* to M^{rs}. *C. . .* and *D. . .*, who fitted this Ship out, each in Proportion to the Sum he has underwrote in Consideration of the Premium they did receive.

We

Cases of Insurances.

CASE VIII. We the underwritten Arbitrators certify, that we have made the above Adjustment. *Bordeaux* the 4 June 1745.
(signed)

VIGNES.

BROUET.

An Assurer on the said Cargo.

Regulation of the ordinary and particular Averages, that happened to the Cargo of the Ship Mentor of Bordeaux, Capt. Nicolas Elié Mée, on her Voyage from this Port to the Island of Martinico according to the verbal Declarations and Depositions referred to in the Settlement of the gross Average, viz.

For the Share and Proportion, which the Cargo is to bear in the gross Average, according to the Adjustment thereof here above mentioned Liv. 5366 : 16 : 6
Gratuity for settling this Account 6

The whole Average Liv. 5372 : 16 : 6

CAPITAL which is to bear this Average.

The whole Cargo amounts as per Invoice of the 1 September 1744 to Liv. 52338
The Premium of Assurance upon this Sum is as follows :

Liv. 15100	insured at <i>Bordeaux</i> a 25	
	per Cent.	Liv. 3775
27500	insured at <i>Bayonne</i> a 26 $\frac{1}{4}$	
	per Cent.	7218
9738	we reckon on the Footing as Liv. 10000 were insured at <i>Paris</i> a 25 per Cent.	2434 : 10
		13427 : 10

N^o. I. Liv. 52338 [a]

Total Capital Liv. 65765 : 10

[a] By this Account it is evident, That in *France* they were at that Time either deficient or remiss in the true Method of calculating the Premiums of Insurance : For, in order effectually to cover Liv. 52338 their Interest, they should have added thereto Liv. 17446 for the Premium, at 25 per Cent. (See *Essay* § 37.)

The

The above Average of Liv. 5372 : 16 : 6 being divided upon CASE VIII. the said Capital of Liv. 65765 : 10, the same amounts to 8 Livres 3 Sols and 5 Deniers *per Cent.*, which the Gentlemen Insurers on the several Policies upon the Cargo of the Ship *Mentor* of *Bordeaux* have to pay to M^{rs}. C. and D. in Proportion to the Sum, which each of them has underwrote, in Consideration of the Premium they did receive.

We the underwritten Arbitrators certify, that we have settled the Account as above mentioned.

(signed)

VIGNES.

BROUET.

An Assurer on the said Cargo.

R E M A R K S.

Besides the Payment of the Sum insured a gross and particular Average was likewise demanded and the Valuation of the Goods made at *Bordeaux* at Prime Cost. N^o. K.

The Repartition of the gross Average in this Regulation could not be made according to the Direction of the Ordinance of *Louis* the XIV. in 1681. in the 3 Book, under the 8 Tit. 6 Art. fol. 711., *suivant le Prix courant dans le Lieu de la Decharge du Batiment*, (at the current Price at the Place of the Ship's Discharge) because the Ship never arrived at the Port, to which she was bound to unload, for after she was repaired at *Lisbon*, she was taken by an English Man of War in her Voyage to *Martinico*, and therefore must of Necessity be calculated on the Cost of the Cargo.

According to the Account of the Owner, to whom at the same Time the greatest Part of the Cargo did belong; This Accident was attended with this particular Circumstance, that at that Juncture no Money was to be found at *Lisbon* on Bottomry, since otherwise it is usual on such Occasions, to take the Money required for the Repairs upon Bottomry at the Place, where the Ship goes to refit, and then the Lender of such Money on Bottomry runs the Risk thereof himself; And as the Premium of Assurance was excessive high there, and yet the Factors had no Security for their Disbursements without an Assurance, they therefore judged it most adviseable, to draw for the Expences

CASE VIII. of the Repairs upon the Owners at *Bordeaux*, and to leave it to him to settle with the Parties concerned or with the Insurers.

N^o. M. In what Manner the Owner explained himself, concerning this Matter towards his Insurers at *Bordeaux* and *Bayonne*, who had underwrote on the Cargo, is not known, nor how much he received of them; But as to the £. 2000 *Sterl.* insured at *London* upon the Ship, we know that he did indeed give a general Notice to an Assurance Company of the Damage that had happened, but had no Note made either in the Policy, or in the Company's Books, of what he would have understood by it.

N^o. N. But afterwards it appeared, that this Money, which was disbursed for the Repairs had not been insured by any Body, and the said Owner seemed to have been of Opinion, that the Insurers ought to pay those Expences over and above the Sums they had underwrote, in Case the Ship was lost after her being repaired, since he demanded . . . *per Cent.* for gross Average, according to the above Regulation, besides the 98 *per Cent.* which they were obliged to pay.

N^o. O. For some particular Considerations, this Affair was left to Arbitration, and thereby determined, that £. 2280 *Sterl.* should be paid for the £. 2000 *Sterl.* insured at *London*, and the Company complied with this Award. However, that no irregular Consequences may from hence, hereafter be drawn by way of Precedent, we must observe, that, according to our Opinion, and to strict Justice, the Laws and Customs were not in all Respects sufficiently regarded in this Regulation drawn up at *Bordeaux*, and approved by the Arbitrators at *London* as above mentioned. For

N^o. P. *First*, Notwithstanding the Ship was six Years old, and in Course several of the Materials, which were replaced by new ones, must have been already greatly worn, yet no Allowance was made for the same to the Assurers in the Articles of Liv. 2930: 2640 and 1711, tho' it be every where customary to make an Abatement for Wear and Tear. Whereon, see the Opinions more at large in the *Case XII. C.*

Secondly,

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CASE VIII.

Secondly, The Insurers are charged with
 Liv. 290 for Materials broke and carried away by the Storm, N^o. Q.
 649 for Bread and Fish spoiled,
 1023 for other Materials, that were broke.

Wherein no Regard seems to have been had to the above mentioned *Ordin.* in the 3 *Book*, under the 6th *Tit.* and 29 *Art. f.* 685. *Les Dechets, Diminutions & Pertes, qui arrivent par le Vice propre de la Chose, ne tomberont point sur les Assureurs* (the Waste, Decay or Losses, that may happen through the natural Tendency in the Quality of the Thing itself, shall not fall upon the Insurers.)

Thirdly, The following Sums, viz.

N^o. R.

Liv. 40		to the Interpreter,
65 : 15		to the Vice Consul,
131 : 7 : 6		to the Consul,
130		to the Custom-House Officers,
150		to the King's Officers,

which are here charged upon the Ship alone, ought, as is otherwise customary, either to come into the gross Average, or else to be reckoned as common Average $\frac{2}{3}$ upon the Cargo, and $\frac{1}{3}$ upon the Ship.

Fourthly, It is judged, as the Assurance at *London* was made on the Ship only, and not on the Freight, and as each of them contribute for half their Value only, therefore the Insurers on the Ship ought by no means to bear the full Share of the Freight, for altho' the Ship was insured at £. 2000 *Sterl.* yet Ship and Freight together contribute here for no more than Liv. 41000, as is shewn more at large in the next ensuing *Case*.

As it was not explained, whether the Insured could have taken a Premium of Bottomry, or not, if the Ship had arrived safe at *Martinico*, there remained a Doubt, and the Insurers, as well as the Insured are esteemed equally blameable, if they do not explain themselves more fully, when Circumstances of this Kind are known, and it seems reasonable, that the Party, who disburses the Money should naturally take care so to do for his own Security, consequently, when such Disbursement is made in an Affair, wherein several are concerned, and that it cannot immediately

CASE VIII. mediately be determined, how much will fall to the Share of each of them, it is most prudent to make a real Insurance, in order to obviate every Difficulty: For then no Dispute can arise against the Charge of the Premium with the Average, since his Insurers will then know, that this Risk is otherwise insured: It is, however, not intended hereby absolutely to determine in Favour of the Insurers, that they are no ways concerned in such Kind of Risk, when the giving Notice thereof happens to be omitted without any sinister Design, or for Want of proper Time, but only to remark, that since the above said Arbitrators admitted Articles apparently wrong in some of the lesser Points, their Decision therefore upon the main Question: Whether this Average was to be paid over and above the Sum insured, which was to be at 98 *per Cent.* cannot be deemed decisive without more conclusive Arguments.

Nº. S. Those, who were nominated to enquire into and to settle this Loss on behalf of the Company, objected to this Demand. For as the Insured had neither declared in the Policy, nor proved by any other Circumstance, that the original Insurers were not to be charged with any Premium of Bottomry for this new Disbursement after the Voyage was finished, he therefore had no sufficient Reason to insist on the Company's paying this Average over and above the Sum insured; since what he intimated to them in general of this Affair, might be taken as well on one Side of the Question as on the other.

Besides it might be suspected, that the Insured had designedly postponed this Affair, in order to make a more favourable Calculation for himself, when the Voyage was ended.

If on the contrary the Ship had arrived at *Martinico*, then the Average must have been settled according to the French Ordinance, that is to say, according to the Value of the Goods there, which amounts usually to double what they are worth at *Bordeaux*, by which means so much the less would have fallen to the Share of the Company, as Insurers on the Ship; which evinces at the same Time the Necessity, that the Assured ought before-hand and in due Time to make his Declaration, when he would have it understood otherwise.

It

It is from thence however not to be concluded, that such of the Insurers in *London* are right in their Opinion, who suppose, that their Consent is absolutely required, when more than 98 *per cent.* is to be paid for 100*l.* that is underwrote; but it is taken for granted, when the Insured gives Notice in Writing to the Insurer, or can prove in any other Shape, that he did not intend to add any Premium of Bottomry or Insurance, when he came to demand Payment of the Average, that then those Assurers are liable to bear the Risk in Proportion to the Charges over and above the Sums underwrote at 98 *per cent.*

Supposing a Ship that is put up at *London* for *Lisbon*, and Insurance made on the same at and from *London*, for £. 1000 at 98 *per cent.* should by the floating of Ice, or other Accident, be so much damaged, that the Repairs may amount to £. 100, which the Insurer paid before her Departure. Now the Question is: If that Ship should afterwards happen to be lost on her Voyage to *Lisbon*, whether the Assurer is to pay only the remaining £. 880, or the full 980? The Answer is: If the Insured has charged the Assurer in the Account of the £. 100 Average, with a proportionable Premium, then he is only liable to the Payment of £. 880: But otherwise he is answerable as well for the Repairs of the Ship, as for her Safety till she arrives at *Lisbon* in a Condition to be worth the 980*l.* Consequently he ought to pay that full Sum if she be lost on her said Voyage to *Lisbon*.

N^o. U.

There are likewise some Examples, wherein Custom and Precedents alone can decide. As for Instance: In the late Case of a *Danish* Ship the *Little Benjamin*, Capt. *Carsten Neuschilling*, which, on her Voyage from *Hamburg* for *Cadiz*, was stopped at *Dover*, and after being cleared with considerable Expence, was lost not far from *Dover*, before any Settlement or Repartition of the Charges was made at *Hamburg*, neither had any Declaration been made to the Insurers, that no Premium of Insurance was intended to be charged to them. Yet as it appeared from all former Accounts sent by the Merchants at *Hamburg* in relation to other Ships detained in *England*, that neither their Agents, who disbursed the Money, nor those immediately concerned, did ever charge the Insurers here with any Premium of

N^o. W.

In-

CASE VIII. Insurance ; this therefore was alone sufficient to condemn the Insurers likewise in this Case to pay the Charges of reclaiming in Proportion to their Shares, besides the full Loss at 98 *per cent.* due on the Ship's being cast away ; and it would have been an Injustice done to the Insured, had it not been so settled.

CASE IX.

C A S E IX.

Shewing the Regulation of a gross Average, which happened to the Ship la Couronne de Rochelle, Capt. Auriaud, and to the Goods shipped on board her, on her Voyage from St. Domingo to Rochelle, where she arrived the 19th of July, 1747.

IT appears from the Declaration made according to Custom by the Captain of the Ship *la Couronne* on the 22d of *July* before the Admiralty of this City, and confirmed by his Ship's Company, that after the Ship sailed with the Fleet from *St. Domingo*, and had been 12 or 13 Days on the Voyage, they discovered on the 26th of *May*, such a considerable Leak in her, that the Water increased 2 or 3 Feet in an Hour, which so tired the People on board, that they could no longer keep the Ship clear by pumping. That, when the Captain saw the Risk of sinking before his Eyes, he made the usual Signal of Distress, and towards Evening came up with the Commodore, and acquainted him with his Condition, who ordered that he, the Captain, should keep near unto him for that Night. That, though the Water continued still increasing the next Day, and the People were no longer able to stand to the Pumps, yet he was loth to put out his Boat, in order to get Assistance, for Fear the Crew should leave the Ship, he therefore resolved to bear up to the Ship *Theodore*, in which the Owners of his own Ship were likewise concerned. The Commodore having then brought to, at the Request of both these Captains, and Orders being given, the Boats from several Ships came along-Side of his Vessel, in order to lighten her, and to make Room to search for the Leak, and to stop the same. That these Boats fetched out of his Ship Sixty-eight Casks of Indigo, consisting of Wholes, Halves,

Halves, Thirds, and Quarters; moreover, one Hoghead white Sugar, all of different Marks and Numbers, being Part of those which were shipped on Freight for others, whereof he took as exact a Memorandum as the prodigious Hurry would permit, but cannot pretend to aver, that no Mistakes are to be found in it. According to this List, out of the Sixty-eight Casks of Indigo, and one Hoghead Sugar, nineteen whole, four half Casks of Indigo, and the Hoghead of Sugar went on board of the Ship *l'Esperance*, Capt. *la Porte*; five whole, two half, and two Quarter Casks Indigo on board of the *Atlas*, Capt. *Robert*; one and twenty whole, six half, and five Quarters, on board of the Ship *le Theodore*, Capt. *Theodore Bonfils*; and two whole, with five halves, on board of the Ship *le Solide*, Capt. *Comte*: That after a diligent Search, he found the Leak that Night in the Stern of the Ship, and stopped it as well as he could, &c.

CASE IX.

From the Enquiry that was made at the unloading of this and of two of the other Ships, which took some of the Indigo on board, it was reasonable to conclude, that 20 Whole, 5 Half, 1 Third, 4 Quarter Casks, and 1 Anchor of Indigo, as also one Hoghead white Sugar, were put on board *l'Esperance* and the *Atlas*, which were both taken by the *English*; and all this together makes the Object of this Average.

Gross or general Average.

N^o. A.

20 whole Casks, 5 half, 1 third, 4 quarter,
and 1 Anchor Indigo were taken by the
English; which Indigo, according to the
Invoices produced, did altogether weigh at
St. Domingo - nett 20577 lb.

Deduct 10 per Cent. for Waste
as usual -

2058

18519 lb. at

Liv. 3 : 19 : 3 per lb. free of all Charges, *Liv.* 73381 : 10 : 9.

1 Hoghead

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1 Hogthead clay'd Sugar weighed

gross 1090 lb.

Tare 12 per cent. 131

959 lb. a 25 Liv. per 100 lb. free as
above - 239 : 15

Freight of the Indigo and Sugar put on
board of the *Atlas* and *l'Esperance*,
which two Ships were taken by the
English; but the Freight thereof be-
longs to the Ship *la Couronne*, as she
unloaded those Goods for the general
Benefit - - 7647 : 7

For Freight paid to the Ships *le Theodore*
and *le Jupiter*, for the Parcels of In-
digo which they delivered in *France* 5872 : 10 : 8

Expences of this Adjustment - 50

Total of this Average Liv. 87191 : 3 : 5

To which Average the sundry Effects are to contribute in the
following Proportion :

The Cargo consisted of the following Goods;

282 Bques. 8 Q^{ts}. Sugar, weighing all
together nett 198949, at Liv. 13 : 10
clear of all Charges - - Liv. 26858 : 2 : 3

169 Bques. 13 Q^{ts}. clay'd Sugar, weight
nett altogether 156606 lb. at Liv. 25
the 100 lb. clear as above - 39151 : 10

37 Bds. 21 Bques. 5 Tierçons, 16 Q^{ts}.
3 Ancres of Indigo, which came in
this Ship, and weighed nett 38037 lb.
a Liv. 3 : 19 : 3 per lb. clear of all
Charges - - 150721 : 12 : 3

26 Bds. 6 Bques. 2 T^{çons}. 5 Q^{ts}. of In-
digo, which came in the *Jupiter*, and
Theodore, weighing nett 22022 lb. a
Liv. 3 : 19 : 3 clear of all Charges 87262 : 3 : 6

20 Bds. 5 Bques. 1 Trçon. 5 Q^{ts}. 1 An-
cre of Indigo, which were put on

board

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board of the *Atlas* and *l'Esperance*,
amounting by the Account here above
specified, to - -

73381 : 10 : 9

1 Barrel white clay'd Sugar, put on
board of the *Esperance*, amounts by the
said Account to - -

239 : 15

377614 : 13 : 9

Half the Value of the Ship, appraised
according to the Condition she was in
at the Time of this Average

14000

According to the Account delivered of the
Freight (which is found just and true)
the Whole amounts to Liv. 121473 : 3,
including the Freight of the Indigo
and Sugar, that were taken, and the
Average for their half; of which the
half is - -

60736 : 11 : 6

Liv. 452351 : 5 : 3

The general Average, amounting as beforementioned to
87191 Livres, 3 Sols, 5 Deniers, being divided upon the above
Capital of 452351 Livres, 5 Sols, and 3 Deniers, makes the
Loss 19 Livres, 5 Sols, and 6 Deniers for every 100 Livres,
and the Goods that were on board retain by that Means their
abovementioned Value, Liv. 19 : 5 : 6

N^o. B.

N^o. C.

The Ship contributes thereunto

Liv. 2698 : 10

The Freight - -

11707 : 1 : 3

The Cargo - -

72785 : 5 : 9

Liv. 87190 : 17

I the underwritten *Ancien Eschevin* and *Conseiller Perpetuel de*
l'Hotel de Ville de la Rochelle, *Sindic de la Chambre de Com-*
merce de la dite Ville, certify hereby, that I have made this Ad-
justment according to the Laws of this Kingdom, and agree-
able to the Documents therein mentioned. Done at *Rochelle*,
the Fourteenth of *November*, One Thousand Seven Hundred
and Forty-seven.

(Signed)

GASTUMEAUT.

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X

RE-

CASE IX.

REMARKS.

N^o. D.

It appears from the foregoing Regulation, that the nett Proceed of the Cargo was calculated according to the Prices the Goods were sold at. One of the Concerned had caused Insurance to be made with the *L. A. C.* on one Quarter Part of the Cargo of *l. Sterl.* for the Owners Account. Without sending any Invoice of the Cost, he demanded the Payment at the Rate of *19 l. 5 s. 6 d. per cent.* upon the Sum insured of *l. Sterl.* as it had been paid by some private Assurers in London. But it was remonstrated to the Assured, that it was necessary to see the Invoice of the Cost of that Part of the Cargo which was insured, as well as the Account, which was formed of the Sales thereof: For if it should appear that the first Cost being calculated at *11 d. per Livre*, as was stipulated in the Policy, did, with the Addition of the Premium, amount to more than it stood charged in the gross Average, then there would not be *£. 19 : 5 : 6* to be paid, but so much less as it might amount to on this greater Sum. For Instance: If these 26 Boucauds, 6 Bques. 2 Tcons. 5 Qts. weighing 22022 lb. of Indigo (which contribute now at *Liv. 3 : 19 : 3* for *Liv. 87262 : 3 : 6* a *Liv. 19 : 5 : 6*, *Liv. 16798*) had weighed at *St. Domingo* neat 23000 lb. and were bought at *2 ½ Liv.*

makes	-	-	-	-	Liv. 57500
Charges	-	-	-	-	1500
					Liv. 59000

Assurance of *Liv. 100* to pay *Liv. 98*.Deduct $\frac{1}{2}$ per cent. on 98 $\frac{49}{1000}$ $\frac{1}{2}$ per cent. on 100 $\frac{50}{1000}$ 36 per cent. Prem. $36 \frac{75}{1000}$

37 $\frac{74}{1000}$ 60 $\frac{26}{1000}$ If for 60 $\frac{26}{1000}$ must be insured 100, for 59000 *Liv.*there must be *Liv. 97909 $\frac{366}{1000}$* at 36 $\frac{3}{4}$ per cent. *35981 : 11*

Liv. 94981 : 11

At

At which Rate, if the Assured had made his Insurance to the full, he could, in case of Loss, have received the said Liv. 94981 : 11, and then the above Average of Liv. 16798 ought to be divided upon that Sum of Liv. 94981 : 11, which would amount only to Liv. 17 : 13 : 11 *per cent.* or if the Insured had not made Insurance for the Whole, then he ought to be regarded as his own Assurer for the Remainder. But as it appeared afterwards by the Invoices, which were produced, that the Cargo, with the Addition of the Premium, did not amount to a larger Sum than it was rated at in the gross Average, according to the Price it was sold for, the *L. A. C.* therefore paid the £. 19 : 5 : 6 *per cent.* upon the Sum they underwrote.

CASE IX.

Nº. E.

Another Person had made Assurance with the *R. E. Cº.* for £. 1400 *Sterl.* on half of the Ship, and for £. 1050 *Sterl.* on half of the Cargo for the Owners Account. As in settling a general Average in *France*, the Ship and Freight contribute only for half their Value, and the Ship having been valued at 5000 *l. Sterl.* in the Policy, it appeared plain enough from thence, that the Intention of the Insured was to include, in this Valuation, the dear victualling of the Ship in *America*, which was to be gained again by the Freight, and to insure the same, as is permitted to be done by the *French Ordinance*; but it shewed at the same Time, that this was not the Manner of doing it.

Nº. F.

Somebody in the Behalf of this Company made up the Account of the Loss on the Cargo in the following Manner:

Nº. G.

The first Cost amounts to - Liv. 114202 : 4 : 1

Whereof the Half is - 57101

At 11 *d.* is - - £. 2617 : 2 *Sterl.*
Policy and Commission of £. 1400 - 7 : 4 : 6

Premium of £. 3240, a 17 *per cent.* £. 2624 : 6 : 6
550 : 16

of £. 3240, to pay 98 for 100, is
£. 3175 : 4 for -

X 2

£. 3175 : 16 : 6
L O S S.

CASE IX.

L O S S.

Upon 57101 Liv. a 19 Liv. 5 $\frac{1}{2}$ is Liv. 11008
 at the Exchange of 32 d. for 3 Livres £. 482 : 3 Sterl.
 to be divided upon £. 3240 at £. 15 : 1 : 11
per cent.
 For £. 1400, to pay at £. 15 : 1 : 11 £. 211 : 6 : 10
 less $\frac{1}{2}$ per cent. - - - 1 : 1 : 1
£. 210 : 5 : 9

The Calculation of the Loss on the Ship he made as follows :

The Ship being valued in *France* at 28000 Livres only, whereof no more than the Half was included in the Contribution, this upon Liv. 14000, at Liv. 19 : 5 : 6 *per cent.* would make Liv. 2698 : 10, and at 32 d. *Sterl.* £. 119 : 18 : 8 Sterl.

Which divided upon the Valuation of the Ship of £. 5000, would make to be paid £. 2 : 8 *per cent.* which of £. 1050 a £. 2 : 8, is - - - £. 25 : 4

to pay at 98 *per cent.* 24 : 14
 less $\frac{1}{2}$ per cent. - - - 2 : 6
24 : 11 : 6

N^o. H. On the other Side, the Insured in *France* demanded, as the Ship was insured at 5000 *l.* which at 32 d. make 112500 Liv. and she, together with her Freight, having contributed for no more than

14000 Livres	} at Liv. 19 : 5 : 6 <i>per cent.</i> {	Liv. 2698 : 10
and 60736		11707 : 11 : 3
<u>74736 Liv.</u>		<u>Liv. 14405 : 11 : 3</u>

That therefore it was no more than just to pay the whole Liv. 14405 : 11 : 3, upon the Sum of Liv. 112500, for which the Premium had been received, at the Rate of £. 12 : 16 : 1 *per cent.*

The

The R. A. C°. insisted on the other Hand, that they had no Ways engaged themselves to insure upon the Freight, and that their Refusal to make any Insurance on Freights in general, was well known to every Body; therefore they had no Concern with so much as had been charged in the Account to the Owner for the Freight, nor were they bound to abide by what was decided in France in this Matter.

CASE IX.

Nay, it even seemed to some that the L. A. C°. had been too easy, in the adjusting of this Loss at £. 19 : 5 $\frac{1}{2}$ per cent. It was therefore judged expedient to give the following Explanation of the Manner in which this Affair had been treated.

N°. I.

Upon repeated Examination it was found, that the L. A. C°. had not committed any Error in adjusting the general Average, and accordingly paying l. 19 : 5 $\frac{1}{2}$ per cent. upon the Goods on board the Ship *Couronne*. Had the first Cost of these Goods, (reduced at 11 d. per Livre) with the Addition of the Premium, amounted to a greater Sum than what they were rated at in this Contribution, they then should not have paid quite so much as l. 19 : 5 $\frac{1}{2}$ per cent. as it was observed by them in settling the gross Average upon the Ship with Mr. M—z. But in this Case it amounted to pretty near the same Sum, whether the Value of the Goods was calculated at the Prices they were sold for, deducting the Freight and Charges, or at prime Cost, with Addition of the Premium, viz.

The Amount of the Goods delivered on board at St. Domingo was ———— Liv. 314775

To be fully insured for that Sum, when only 98 per cent. are paid, the Assurance ought to be made for Liv. 388611, at 17 per cent. 66063

Liv. 380838

And according to the Prices of the Sale, they are rated in this Average at ———— 377614

the Difference is ———— Liv. 3224

Which is but a trifling Difference in the Sum of 455474 Liv. or £. 45231, and amounts either Way to above 19 per cent. consequently hardly worth While to controvert the Regulation made in France of £. 19 : 5 : 6 per cent.

How-

CASE IX. However as it was desired, that the Opinions of impartial Merchants should be procured, concerning the abovementioned Calculation, which makes the Loss on the Ship to come to £. 2 : 8 for £. 100, or to £. 23 : 11 for the whole Sum insured. A Merchant gave his Sentiments on this Subject in the following Manner :

N°. K.

First, The Insurers, which have underwrote upon the Risk of the Hull of the Ship, are certainly to be distinguished from the Insurers on the Freight.

Secondly, The Insurers in England are not obliged to approve of all Adjustments made in other Countries, nor to comply implicitly with foreign Customs, when their Unreasonableness can be demonstrated.

Thirdly, Yet as it is the Custom at *London*, and in most other Places, that the Ship and the net Freight shall be obliged to contribute for their full Value towards a general Average, considering this Affair in that Light, the Insured would equally be intitled to demand Liv. 19 : 5 $\frac{1}{2}$ *per Cent.* upon the whole Value of the Ship, being 28000 Livres, which makes £. 4 : 16 *per Cent.* upon 112500 Livres.

Fourthly, As the Premium was paid for the Sum of 112500 L. it seems evident enough from thence, that in the Value, for which the Ship was insured, the Provisions, &c. that she had on Board, were included, and it is admitted in England itself, to include them therein ; It remained therefore to enquire : *a*) How much this Ship was actually worth at *St. Domingo*, when she had all her Provisions on Board ? and : *b*) How much she produced net after the Voyage was performed with the Freight ? Now if no Insurance at all had been made on the Freight, then the Owner ought to contribute towards the Liv. 14405 : 11 : 3 for the Profit or Surplus on the Freight, after deducting the Provisions and Sailors Wages, and the Insurer on the Ship, for the Value thereof, being Liv. 28000 with the Addition of the above mentioned Expences, it ought not however to fall on the Sum insured of Liv. 112500 alone.

It is

It is not thought improper to remark in this Place, that upon the Foot of the French Ordinance, which forbids insuring on Freight, a Person is not fully secured against Loss in Respect to general Averages, which may happen in Insurances on Ships, when the Expences of Fitting out are included, and assured together with the Value of the Ship, and as these Charges of Fitting out are naturally disbursed for the sake of the Freight, and are sunk again in the same, it would be therefore always most adviseable, to insure the Value thereof abroad upon the Freight. The making Insurance on the Freight on this Principle appears to be almost necessary, and to be attended with less evil Consequences, than including the whole Expence of Fitting out in the Valuation of the Ship. When the Valuation is thus done in an Insurance, and it afterwards proves necessary, that some Part be flung over-board, (towards which the Insurer upon the Ship contributes only for half of the gross or the whole net Freight) the Master or Owner might in that Case think it sometimes more for his Interest rather to let the Ship run a-shore, than to save her either by throwing some Things over-board, or partly unloading of her: For when the Ship was stranded, they could recover from the Insurer the Payment for the Value of the Ship and the whole Expence of Fitting out, as well as for the Freight of the Part, that was saved, which would be clear Profit; On the other Hand in Case of *Jettison*, they would not be intitled to demand from the Insurers the Value of the Share, that falls upon the Freight in the general Contribution, altho' they were insured to the Full, by which Means they might frequently fall a good Deal short.

CASE IX.

N°. L.

In this particular Point, the French Ordinance of *Louis XIV.* 1681. which is so well digested in other Respects, seems to want Amendment: either by altering that Part of the Law, which utterly forbids the making Insurances on Freight; as by *Num. 678.* or that Part of the Law, which directs that in Case of *Jettison* the Ship shall contribute no more than half of its Freight, and half of its own Value; as by *Num. 754.* For according to this, notwithstanding the Owners should fully insure their Ship and Outset, and pay a Premium for the same; it seems by the wording of the Law, as if they could not recover from their Insurers any Thing of what the Ship should contribute.

N°. M.

CASE IX. tribute for the Freight, because that is prohibited from being insured. But as by Num. 670. it is expressed, that Ammunition and Provisions may be comprehended in the Value of the Ship, and therefore may be insured, and as these are Articles, which may be looked upon as lost or sunk, but are regained by the Freight: The Insurer, who received a Premium thereon, ought, in our Opinion, to pay what they have contributed to the Average, though such Contribution may have been made under another Denomination. See Sect. 54.

CASE X.

CASE X.

Shewing in two Instances, how a gross and general Average was settled at London, though in neither to a true Exactness.

FIRST INSTANCE.

GENERAL Average upon the Ship *Pelham*, Cap. ———
Reaston from *Carolina* to *London*, settled by Mess. *B—l*,
T—n and *T—d*.

	The Goods thrown over board amount to		£. 868 : 3 : 8
	The Freight of		1565 : 1 : 3 lb.
	Rice a 6d.	-	£. 469 : 11 : 6
Nº. A.	Premium of Assurance		98 : 12 : 6
			£. 568 : 4
	Ditto, of 7 Casks Skins		
	a 55d.	£. 19 : 5	
	— of 28 Ox Hides	2 : 2	
Nº. B.	Premium of Assurance	4 : 10	
		25 : 17	
	The Materials belonging to the Ship		594 : 1
			85
			£. 1547 : 4 : 8

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CASE X.

To be divided upon £. 6071 : 7 : 4 d. viz.	
Upon the Value of the Ship	£. 1189
The Materials thereof	- 85
	£. 1274
	£. 324 : 13 : 9
Goods safely landed	£. 2266 : 3 : 7
- - - thrown over board	868 : 3 : 8
	3134 : 7 : 3 - 798 : 15 : 3
The Freight (Sailors Wages deducted	- £. 1068 : 19 : 1
Wages forfeited	- 594 : 1
	1663 : : 1 - 423 : 16 : 1
	£. 1547 : 5 : 1

REMARKS.

By the above Regulation it does not appear, whether the same was made according to the Prime Cost of the Goods at *Carolina*, or according to the net Produce of them at *London*, consequently no true Judgment can be formed of the Exactness thereof, but in either Case it is not allowable, that the Freight, which was lost, could be demanded with the Addition of the Premium : for the 6 *Skill*. for a 100 Weight Freight of the Rice were not payable till after the Ship was arrived at *London*, consequently the Premium on the Freight is included in those 6 *S.* and there remains so much the less, as the Premium amounts to, for him, that makes the Insurance on the Freight.

Nº. C.

As there are in *London* no Commissioners particularly appointed for the settling of Affairs relating to Insurances and Averages as at *Amsterdam*, nor a Person to adjust the same upon Oath as at *Hamburg*, neither are there any certain Laws relating to Assurances and Averages, therefore it is frequently submitted to private Opinions, especially when there is but a small Difference, whether it be calculated either in one Way or the other, and Things will now and then be misunderstood.

Nº. D.

SECOND INSTANCE.

N^o. E.

AND so it happened by a like Case in settling a general Average in the Year 1743. upon Goods by the Ship *George*, Capt. — *Haliburton*, from *Carolina* to *London*, when the Agent, that was to demand the Payment of the Average, insisted, that the Loss should be calculated upon the Value of the Goods at *London*, deducting the Freight and Duties, but was obliged to acquiesce otherwise.

He accordingly formed his Account in the following Manner :

240 Barrels Rice shipped for C.	a 28½ d.	£. 342
191 Planks	- for ditto a 4 d.	38 : 4
380 Barrels Rice	- for O. a 28½ d.	541 : 10
1 Cask Skins	- for ditto -	45
120 Barrels Rice	- for B. and B. a ditto	171
100 Barrels ditto	- for V. a ditto	142 : 10
6 Casks Skins	- for F. a 45 £.	270
The Ship valued at <i>Carolina</i>	-	1000
Freight of 840 Barrels Rice weighed		
3729 lb.	a 4 d.	£. 745 : 16
— of 191 Planks, cont.	1080	
Feet	a 2 d.	9
— of 7 Casks Skins	a 30 d.	165
		£. 930 : 6
Deduct for Sailors		
Wages	-	£. 276
Pilotage	-	8 : 6
		284 : 6
		646

(It is not customary for the King's Goods to contribute to any Average, nor are such Goods or any Part thereof, that may happen to be thrown over board, paid for)

£. 3196 : 4

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Upon which Sum is to be made good, for the following
Goods flung over-board :

CASE X.

To C. 9 Barrels Rice, a 28 $\frac{1}{2}$ d.	-	£. 12 : 6 : 1
45 Planks	-	9
To O. 83 Barrels Rice	-	118 : 5 : 6
To the Ship for Freight of 92 Barrels Rice,		
weighed 407 lb, a 4 d.	-	81 : 8
45 Planks	-	2 : 5
8 Tons King's Goods, a £. 3.		24
To R. Raston for Expences	-	72 : 16
		£. 320 : 10 : 6

Is equal to £. 10 : : 8 d. for 100		
upon £. 380 : 4 to C.	-	£. 38 : 2 : 11
586 : 10 to O.	-	58 : 16 : 11
171 to B.	-	17 : 3 : 1
142 : 10 to V.	-	14 : 5 : 10
270 to F.	-	27 : 1 : 9
1000 for the Ship	-	100 : 6
600 for the Freight	-	646 : 17
		£. 320 : 13 : 6

To this Account neither the Freighters nor the *London Assurance Company*, which had underwrote upon the Ship, made any Objection, but every one paid the Loss accordingly.

It is, however well known, that even in *London* it has on some other Occasions been admitted to make the Calculation of a general Average, according to the Value of the Goods at the Place, where they arrived, and *Charles Molloy*, a Barrister at Law in *England*, who in the Reign of King *Charles II.* wrote a Treatise, *De Jure Maritimo & Navali*, mentions in the 2 Book 6 Chap. § xvi, that this was the Practice every where in his Day.

The *Committee*, that was appointed some Time ago by the House of Commons to draw up an *Ordinance for Insurances*, and consisted of eminent Lawyers and Merchants, was likewise of the same Opinion.

N°. F.

Y 2

CASE

Cases of Insurances.

C A S E XI.

*Shewing how a general Average was regulated at
Hamburgh, according to the Market Price of the
Goods at the Place where they were landed.*

Hamburgh, the 24th of July, Anno 1725.

FROM an Attestation made on the 25th of *May* before the Admiralty of this City, it appears, that at the Request of *John Koch*, Broker, on Behalf of the Concerned, there appeared personally before them Capt. *Miles Rowland*; *Arthur Mellaglibn*, Mate; *Anthony Hayes*, *Bryan Meade*, and *John Gibbeny*, Sailors; who all declared upon Oath, That they departed on the 21st of *February*, Old Style, from *Cette*, with their Ship the *Matthew*, whereof the said *Miles Rowland* is Master: That she was then tight and well found, being laden with Piece Goods, and bound to this Place: That they pursued their Voyage till the 6th of *March*, when they found themselves in 42 Degrees, 52 Minutes Latitude, where they were overtaken by a violent Wind from East North East, and about Five o'Clock in the Evening a great Sea broke over them, which washed away their Boat, carried off one of their Anchors, and moreover damaged the Ship so much, that she was full of Water between Decks, which obliged them to cut a Hole in the lower Deck, for the Water to run off: That likewise 5 Spars were broke in the Ship, and she lay quite on one Side. In this Extremity, in order to save their Lives, as well as the Ship and Cargo, they found themselves under a Necessity of throwing overboard about 23 Casks of Wine, and the same Number of Bales and dry Goods, in order to lighten the Ship; which had this good Effect, that every Thing else was preserved, and they did pursue their Voyage till they reached *Ireland*, where they were forced to put into *Kinsale*, the 19th of *March*, by Reason of bad Weather, as their Ship was very leaky, and also to prevent further Damage. That they departed again from thence on the 6th of *April*, after the Ship was repaired, and then met again with a hard Storm in the Latitude of 50 Degrees, 30 Minutes, by which they lost one of their

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their Fore-sails, with several other Sails, and received considerable Damage besides : That on the 28th of the same Month they arrived in the *Elbe*, and on the 20th at *New Mills*. But having pumped some Wine and Brandy, and likewise perceived a Number of Rats aboard of the Ship; they therefore were apprehensive that the Cargo might be a good deal damaged, notwithstanding they had taken all due Care thereof, and had not embezzled any the least Part of the same. All which is more at large set forth in the abovementioned Attestation.

In order to calculate this Loss upon Ship and Cargo, according to the Usage of the Seas, here follows first

A Calculation of the Capital.

N^o. A.

P---e D---z 3 Chest, containing 165	
Bottles of Oil, a 1 Mk.	Mks. 165
3 Ditto, containing 165 Bottles of Wine,	
a 8 Mks.	- 82 : 8
3 Ditto, with Raisins and Cheese	- 50
	Mks. 297 : 8
Deduct for Freight, Primage, and Duties	60 : 8
Remain	Mks. 237

P---e B---e, 282 Hogsheds Wine, de-	
ducting 10 per cent. for Leakage, re-	
main 254 Hhds. a 26 Mks.	Mks. 19812
50 Butts <i>Picardan</i> , less 10 per cent. re-	
main 45 Butts, a 26 Mks.	- 3510
20 Butts Brandy, containing 1397 Qrs.	
less 10 per cent. remain 1257 Qrs. a	
26 Mks. per 30 Qrs.	- 3268 : 3
	Mks. 26590 : 3
Deduct Freight, Primage, &c. Mks. 5400	
Custom and Excise	- 700
Lighterage, Porterage, and	
Brokerage	- 480 : 3
	6580 : 3
	20010

P---e

Cafes of Insurances.

CASE XI.

P---e M---e, 22 Bales Almonds, weighing neat 11034lb. Part whereof were damaged, produced less 13 Months Discount - - - *Mks.* 3413 : 8
 10 Cafes qt. 720 Boxes Prunelles - - - 1288 : 9
 41 Barrels small Raisins - - - 620

Mks. 5322 : 1

Deduct Freight and Primage *Mks.* 557 : 1
 Duty, Charges and Broker 186

743 : 1

4579

P---e H---s, 2 Chests with Wine, and some trifling Things, cost, as *per* his Account - - - *Mks.* 60 : 15
 Deduct for Freight - - - 7 : 15

53

P---e D---t, 1 Cafe and 2 Barrels *Mks.* 350
 Deduct Freight and Duties 38

312

J---s C---t, 88 Chests Merchandize, the Freight and Duties deducted - - - 600

H---cb N---s, 9 Bales *Provence* Almonds, weighing 4280 lb. a $34 \frac{1}{2}$ *Mks.* with 13 Months Discount - - - *Mks.* 1357
 6 Sacks Gauls, a 300 *Mks.* 1800
 2 Casks Verdigrease, 950 lb. - - - 950

Mks. 4107

Deduct Freight and Charges 307

3800

H---cb

Cases of Insurances.

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CASE XI.

<i>H---ch L---pb M---ck</i> , 19 Bales <i>Pro-</i> <i>vence</i> Almonds, Weight 9400 lb. a		
37 $\frac{1}{2}$ Mks.	-	Mks. 2982
9 Bales <i>Valencia</i> ditto, Wt. 4500 lb. a		
37 Mks.	-	1531
8 Sacks Gauls	-	2400
2 Casks Verdigrease, 1000 lb.	-	1000
	<i>Mks.</i> 7913	
Deduct Freight and Charges	-	683
		7230
<i>A---i B---n</i> , 6 Casks Verdigrease, Wt. 2050 lb.		<i>Mks.</i> 2050
Deduct Freight, Duty, and Charges		120
		1930
The Ship and Freight, Sailors Wages de- ducted		6000
	<i>Mks.</i> 44751	

Calculation of the Average.

For Pilotage and Anchorage at <i>Kinsale</i>	$\pounds. 2 : 3 : 10$	<i>Ster.</i>	<i>N^o. B.</i>
For a Protest	-	18 : 6	
For Pilotage and Port Charges at <i>Fal-</i> <i>mouth</i>	-	1 : 6 : 2	
For Light-Money, in all	-	4 : 18 : 8	
For Pilotage and Expences in the <i>Downs</i>	-	3 : 5 : 6	
	$\pounds. 12 : 12 : 8$	<i>Ster.</i>	

make at 16 $\frac{1}{2}$ Mks. in current

Money	-	<i>Mks.</i> 211 : 10
Pilotage at <i>Heiliglandt</i> , as <i>per</i> Receipt		33
For Damage to the Ship, by the Holes cut in her to carry off the Water		12

To

Cases of Insurances.

CASE XI.

To be paid for the following Goods,
which the Master flung overboard, viz.

220 Hogheads *Frontignac*, at 26 Mks.

to *P...e B...e* Mks. 1716

Deduct 10 *per cent.* Leakage,
and for Excise - 196

1520 .

1 Case belonging to *P...e H...fs*

60 : 15

10 Bales Almonds for *P. M...e*, neat

5256 lb. a $34\frac{1}{2}$ Mks. Mks. 1813 : 5

Less 13 Months Discount 144 : 10

1668 : 11

3 Bales *Provence* Almonds for *H---*

N---s, 1920 lb. at $34\frac{1}{2}$

Mks. - Mks. 662 : 6

Less 13 Months Disc. 52 : 13

609 : 9

5 Bales *Provence* Almonds for *H. L. M--k*

neat 2415 lb. at $34\frac{1}{2}$ Mk. Mks. 833 : 3

2 Bales *Valencia* ditto, nett

1039 lb. a 37 Mks. 384 : 7

1217 : 10

Less 13 Months Discount 97 : 2

1120 : 8

For the People's Declaration and inter-
preting - - - 8

To give Notice of the Average, and col-
lecting the Invoices - 4 : 8

For my Commission, 1 *per* Mill. - 44 : 12

For the Poor - - - 2 : 1

Mks. 5295 : 10

DIVISION.

Cases of Insurances.

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CASE XI.

N^o. C.

DIVISION.

This general Average, amounting to Mk. 5295 : 10, being divided upon 44751 Mk. Capital for every 100 Mk. there is to pay Mk. 11 : 13 : 4.

P--e D--z	Mks. 237	Mks. 28 : 1
P--e B--e	20010	2366 : 14
P--e M--e	4579	541 : 14
P--e H--fs	53	6 : 4
P--e D--t	312	36 : 15
J--s C--t	600	71
H--cb Neuhaus	3800	449 : 11
H--cb L--f M--ck	7230	855 : 9
A--i B--n	1930	228 : 6
The Ship Matthew	6000	710 :

Mks. 44751 Mks. 5295 : 10

(Signed)

JURGEN GREVE,
Dispacheur.

R E M A R K.

To illustrate the wide Difference there is between calculating a general Average by the Insurers, at the Price Goods would fetch at the Place they were bound to, as has been very justly done in this Case, or when the same is made according to the first Cost on board, let us for Example Sake suppose

N^o. D:

That A. has shipped Oil in Flasks, which, with all Charges till on board, and the Premium of Insurance, amounted to £. 100 Sterl. and according to the Price at the Place where they were to go, would render no more than £. 80

B. has Wine and Brandy, which cost in like Manner £. 100, and would produce - 120

C. has Almonds, which cost £. 100, and would yield - 160

D. is Owner of the Ship and Freight, and answerable for £. 100 Value of the Ship, and her fitting-out, in all - 120

£. 480

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Z

If

CASE XI. If of these there were obliged to be thrown overboard in the Voyage the Flasks of Oil belonging to *A.* £. 80
the Wine and Brandy of *B.* 120

£. 200

Then would there be £. 200 to be paid for the general Average upon £. 480, which is £. 41 $\frac{2}{3}$ upon £. 100, and is equal

To *A.* for his Value of £. 80 £. 33 $\frac{1}{3}$

B. Ditto - 120 50

C. Ditto - 160 66 $\frac{2}{3}$

D. Ditto - 120 50

£. 200

N^o. E. If this Sum was calculated upon the respective Capital of the Cost, and of the Ship, with the Expences of her fitting-out, amounting together to £. 400 only, then every one would have 50 *per Cent.* to pay towards this general Average. Now supposing that each of these *A. B. C. D.* had made Assurance to the full upon the Cost for £. 100, there is no doubt when the Insurer of *D.* sees that he has contributed towards the Average for £. 160 whereas he has underwrote and received Premium for no more than £. 100, he will not think himself liable to bear more than the Proportion of 100*l.* as having nothing to do with the further Charge that falls upon the Goods either by a particular Conjunction, or by the Profit the Proprietor makes upon them; but that he ought to pay £. 41 $\frac{2}{3}$ Sterl. only for the Sum underwrote by him as abovementioned.

N^o. F. The same Argument may with equal Justice be made Use of by *A.* towards his Insurer, that although he did contribute no more towards the Average than at the Rate of 41 $\frac{2}{3}$ *per cent.* upon 80*l.* being 33 $\frac{1}{3}$ *l.* yet as the Insurer had underwrote and received the Premium for 100*l.* he ought likewise to pay him without Deduction the whole 41 $\frac{2}{3}$ *l.* which, according to the Repartition, fell upon the 100*l.* he had underwrote for, as

N^o. G. having nothing to do with the Loss on the Goods. But it is become a Custom, that though Ships or Goods are insured for larger Sums than they are afterwards rated at in the general Average, yet the Insurers never allow to the Insured any more than they are charged with in the Repartition. By which Means indeed the Insurers in such Cases take the Advantage of

N. H. the Loss of the Insured: But it ought to be considered, if the Ship

Ship had been lost on her Voyage, that then the Question would CASE XI. not have been, whether the Goods would have produced less or more at the Place they were bound to; but upon the Insured's bringing sufficient Proof that the Goods, with the Premium included, cost him 100*l.* the Insurer would have been obliged to pay the full 100*l.* he underwrote, and no less: As on the other Hand the Insurer of *D.* would not be answerable for more than the 100*l.* underwrote by him on the Goods, which yielded a Profit at the Market-Price.

CASE XII.

C A S E XII.

Whereby is shewn how a general Average was obliged to be calculated at Hamburgh, according to the Value of the Goods at the Place where they were shipped.

Hamburgh, the 22d of April, 1723.

BY a Declaration made before our Admiralty on the 12th of January last it appears, that at the Request of Capt. Michael Wahn there personally appeared before that Court John Frider Stapenius, Mate, Jurgen Rudolff Seefeld, Carpenter, John Knust, and Henry Kloot, Sailors; who upon Oath declared: That they did belong in the aforesaid Capacities to the Ship the *Red Lion*, whereof the above Wahn is Master, and that they departed in her from the *Elbe* on the 25th of November last past, being loaden with Corn, and bound for *Lisbon*: That they had continual contrary Winds whilst they were at Sea, so that they could not possibly make the Channel, but were drove back again into the Latitude of the *Texel*, and upon the *Doggers Sand*, the Sea very frequently breaking over them at the same Time. That on the 26th of December in the Night, they had the Misfortune to have their Bow-sprit with the lower Yard and Sail broke to Pieces, and carried over-board by a great Sea: That likewise by the heavy rolling of the Ship, the Fore-Mast, with the Fore-top-Mast, Top-gallant-Mast, Stay, Shrouds, Main-stay, Main-top-gallant-Mast, with the whole Set of Sails, went over-board; all which they were obliged to cut away immediately, to get quit of them, least by their working, the

CASE XII. Ship should go to the Bottom ; and that besides they were forced to cut a Main-top-Stay in Pieces to cover and preserve the Cables. Being then but about 28 or 30 Miles from *Heilige Land*, they found themselves under the Necessity to return back to the *Elbe*, as they found it very difficult to steer the Ship. On the 27th they saw the Lights upon the *Heilige Land*, but were obliged to keep before the Wind. The 28th they were forced to let go 2 Anchors at once in 9 Fathom Water, and had that Night a violent Storm with Showers of Hail and Rain. The 30th it cleared up, when they began to weigh their Anchors, but could ship only one, and were obliged to cut the Cable of the other, and then steered their Course Southward ; but the Wind being very variable, they were forced to come to Anchor again in 8 Fathom Water, before the Breakers of the Northern Flats, with a new Cable, never before wet : The Weather continuing excessive bad, they rode there till the 31st in the Morning, when the said Cable parted ; and as they did not know how far from the Anchor this Cable might be broke, they were obliged to cut away the Remainder of it close to the Windlass, in order to bring the Ship before the Wind. At last the Ship came before the Wind, and then they steered their Course for *Heilige-Land*, where in the Afternoon they got three Pilots on board, and agreed with them for 100 Rixdollars, besides some Expences they were at. That on the 1st of *January* in the Morning they came to an Anchor in the *Elbe*, when they found that several of the Clamps and other Timbers were broke by the Sea, and that many of the Pins and other Fastenings had given Way, as likewise that the Rudder with the Iron Pin belonging to it were damaged. That on the 26th of *December*, whilst at Sea, they were obliged to cut a Cable of four Strangs to Pieces, and to make thereof a Main-top-stay, with four smaller Stays upon the Stump of the Fore-Mast and Shrouds for the same : That they hired an Anchor at *Cuxhaven*, and on the 3d returned to this City. That in case the Cargo should prove damaged, the same was occasioned by the frequent breaking of the Sea over them ; for they had always a close and tight Ship, the Hold being double lined, the Hatches covered with double Tarpaulins, and every Thing well secured with Matts ; neither had they embezzled any Part of the Cargo, as is more at large set forth in the said Declaration hereunto annexed.

As

Cases of Insurances.

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As this Ship was obliged to be unloaden and repaired; **CASE XII.**
and in order to make the Calculation of such Damages and
Losses, as concern the Ship and Cargo jointly according to the
Custom of the Sea, here follows first:

An Account of the Capital.

N°. A.

The Cargo, according to the Bills of Loading, consists in the
following Articles:

261 Sacks of Dantzick Barley, 12 Laft,		
a 26 Rlrs.	-	Mk. 936
451 Sacks Wheat, 20 Laft, a 79 Rlrs.		4740
318 Sacks Rye, 14 Laft, a 45 Rlrs.		1890
1050 Sacks, 20 whereof were put loose		
into some of the others	-	767 : 13
Charges till on Board	-	536 : 3
		Mk. 8870
The Ship with fitting out, valued	-	7000
		Mk. 15870

Account of the Average.

N°. B.

For the Bow-sprit and its Supports	-	Mk. 51	
- the flying Yard	-	-	6
- the lower Sprit-Yard	-	-	12
- the Fore-mast, &c.	-	-	75
- the Yards to the Fore- and Fore-top-			
fails	-	-	27 : 8
- the Fore-top-mast	-	Mk. 15	} 35
- the Fore-top-gallant-mast	-	8	
- the Fore-Yard	-	12	
as per Account Let. A.		Mk. 206 : 8	

For

Cases of Insurances.

CASE XII.	For a new Fore-fail as <i>per</i> Bill Let. B.	-	109 : 4
-	a Cros-jack-fail	Mk. 30 : 6	} 60 : 3
-	the Fore-stay-fail	29 : 13	
-	a Fore-top-mast-fail	21 : 15	} 64 : 7
-	a Cluver	42 : 8	
-	new Shrouds to the Fore-mast, Fore-top-mast, Fore-top-gallant-mast and Stay, with running Rigging, as <i>per</i> Bill Let. C.	-	200
			Mk. 640 : 6

All the above mentioned were broke first, and then cut away and thrown over-board, that they might be no Hindrance in the Way, deducting therefore first $\frac{1}{4}$ Part, because they were all made new, there remain 427 Mk. $\frac{3}{4}$ whereof belong to the Ship only

N°. C.

			Mk. 284
	and $\frac{1}{4}$ to the general Average upon Ship and Cargo	-	Mk. 143
	For a main Top-stay-fail cut in Pieces to cover the Cables	-	20
-	a Horse-line cut for rigging, and Shrouds to the Mast	-	110
-	the Cable, that was cut, has been valued by the Elders of the Ropemakers Company, as <i>per</i> Bill Let. D. at 536 Mk. for which put	-	500
-	the Anchor belonging to it, 689 lb. a 20 Mk.	-	137 : 8
-	the Stock to ditto	-	18
-	the second Cable, that broke and was afterwards obliged to be cut, is valued at 306 Mk. whereof $\frac{2}{3}$ belong to the Ship alone Mk. 200, and here	-	100

For

Cases of Insurances.

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CASE XII.

Nº. D.

For the Anchor 800 lb. falls upon the Ship alone, since it was not cut, but the Cable parted.

- the Rope to the Buoy, upon the Ship alone.

- Valuation of the Damage to the Cables 12

- a Rope to a Buoy cut away with it 15

- the Pilots of Heiligland 300

- Expences of the Pilots for Boats and going a-shore there 16 : 8

- particular Damage to the Ship, remains for the Ship alone.

Nº. E.

- an Anchor hired at Cuxhaven 18

- sending the same back again 6

- Augmentation of the People's Wages for unloading and loading again 306

- Hamburg Pilotage coming in again 75 : 12

- ditto going out the second time 42

- the Declaration of the People 8

- unloading 46 Last Corn, a 1 Mk. 46

- carrying up into the Granaries 72 : 10

- Duty upon Re-importation of the Corn 80

- fetching down again from the Granaries, and carrying on board 132 : 6

- three Months Rent of the Granaries 54

- measuring the Corn 24 : 12

- turning the same 75 : 12

- my Commission, 1 per Mil 15 : 14

- the Poor 1 : 12

Mk. 2330 : 14

DIVISION.

Cases of Insurances.

D I V I S I O N.

N°. F.

Which general Average of Mk. 2330 : 14 being divided upon the Capital of 15870 Mk. makes to pay for every 100 Mk. Fourteen Marks Eleven Shillings, I say Mk. 14 : 11

Mr. P-l I-ch for the Cargo

of Mk. 8870 . . . Mk. 1302

For the Ship *Red Lyon* 7000 . . . 1028 : 14

Mk. 15870 Mk. 2330 : 14

In Witness whereof I the Dispatcheur, or Officer appointed by Authority for settling of Averages, have signed this Adjustment, and sealed the same on the Outside. In *Hamburgh*, as above

JURGEN GREVE.

R E M A R K.

N°. G.

The Calculation of this general Average happened to be made at the Place, where the Ship was loaden, and to which Port she was obliged to return to be unloaded and repaired, and therefore the Contribution of the Goods towards the common Loss could in this Instance be calculated no otherwise than according to their Value at the Place where they were shipped, or the first Cost of them.

N°. H.

From this and the foregoing Example is further plainly to be observed the Difference, mentioned in § 54 of our *Essay*, and which the Dispatcheur at *Hamburgh* paid a due Regard to : For when he makes the Goods in the former Case contribute according to their Prices at the Port of Delivery, then he taxes the

N°. I.

Ship according to the Value it is esteemed at coming from Sea and the net Freight, but when the Goods contribute according to their Value at the Place of Shipping or the first Cost, as in this Instance, then the Ship is rated according to its Cost and fitting out, or more properly, according to the real Value thereof in the Condition, it returned in, and the Remainder of the fitting out, and the Provisions ; but not the Freight.

C A S E

C A S E XIII.

*Shewing how a general Average was settled at
Leghorn.*

THE Commissioners of the Chamber of Assurances and Averages in the City of *Amsterdam*, having seen several authentick Writings, drawn up at *Copenhagen* and other Places, from the Contents whereof it appears, that the Ship the *Victoria*, commanded by Capt. *Gabriel Aschbohm*, departed from *Croonstadt* the 2 *Septemb.* 1747. being bound for *Leghorn* with a Cargo of several Sorts of Goods, in the Prosecution of which Voyage the said Ship run a-ground near *Drago*, from whence by the Assistance of a Number of Hands, some Lighters and taking out Part of the Cargo she was by main Strength heaved off, and got a-float, but being become very leaky, and much damaged by the beating against the Ground, and having afterwards met with several hard Gales, by which they suffered many Accidents, the Master and Mariners were obliged, for the Preservation of their Lives and of Ship and Cargo, to carry her into the Road of *Copenhagen*, where she was unloaded, in order to be repaired. That on the 5th *January* 1748. after the Cargo was taken on board again, and the Ship ready to depart, the Frost set in so severe, that she was detained there till the 13 *April*, when they went from thence, and prosecuted their Voyage; All which is set forth more at large in the above said Writings.

Here annexed is an Account signed by *C...d C...r* Widow and Son as Agents for the said Ship, containing the Damage suffered and Expences disbursed in Relation to this Affair, amounting in all to the Sum of - - - *Fl.* 9202 : 10 which the said *C...d C...r* Widow and Son requested to be divided by way of general Average upon the Ship and the Goods she had on board, producing for that Purpose the Documents from the Shippers, specifying the Quality, Quantity and Value of the Goods put on board, to which was added the Valuation of the Ship as follows:

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A a

P--tt

No. A.

Cases of Insurances.

CASE XIII.

P--tt and L--e, of J--n B--ff

Sundry Goods, amounting to Fl. 195383 : 14
 comp. Fl. 195375

T--n and P--s of H--b C--g

83 Packs Russia Hides, amount. Fl. 23793 : 15
 comp. 23800

Ditto, 41 Packs Wax and 7 Packs Russia
 Hides, amount. Fl. 10716, comp. 10725

Le B--r and B--e

14 Packs Russia Hides, amount. Fl. 4000
 comp. 4000

J--n B--ff

10 Packs Ravensduck, amount. Fl. 2496 : 17
 comp. 2500

T--r P--ff W--ff

24 Casks Cavier, amount. Fl. 2458 : 2, comp. 2450

S--r and M--ff

5 Packs Russia Hides, amount. Fl. 1000 1000

The above mentioned Ship valued by the
 Commissioners 28000

Fl. 267850

N^o. B. Now in order to come to an Adjustment of this general
 Average, the Commissioners have examined the several Articles
 in the Account of the Damage and Expences, and approved
 of the same, for the Sum of Fl. 9198

Adding thereunto

For the Commissioners Dues	267 : 17
To the Secretary for his Trouble	10 : 10
To the Messenger of the Chamber	4 : 4
For Stamps	10 : 16
To the Poor	7
To ditto, <i>per</i> Ballance	16 : 19 : 8
	Fl. 9508 : 13 : 8

Which

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Which said Fl. 9508 : 13 : 8 being divided upon Fl. 267850, CASE XIII.
the Commissioners find, that each Hundred thereof ought to
bear Fl. 3 : 11. And the Commissioners adjudge accordingly,
that the said Damage and Costs must be born and paid by the
Shippers of the Goods and the Master of the Ship in the fol-
lowing Proportions :

<i>P--tt</i> and <i>L--e</i> of <i>J--n B--ff</i> of Fl. 195375	to pay	Fl. 6935 : 16 : 8	N°. C.
<i>T--n</i> and <i>P--s</i> of <i>H--b C--g</i>			
23800	-	844 : 18	
Ditto 10725	-	380 : 14 : 8	
<i>Le B--r</i> and <i>B--e</i>			
4000	-	142	
<i>J--n B--ff</i>			
2500	-	88 : 15	
<i>T--r P--ff W--ff</i>			
2450	-	86 : 19 : 8	
<i>S--r</i> and <i>M--ff</i>			
1000	-	35 : 10	
The Master of the Ship			
28000	-	994	
<u>Fl. 267850</u>	to pay	<u>Fl. 9508 : 13 : 8</u>	

Done by the said Commissioners
the 31 May 1748.

(was signed)
J. H O P Hhs.

Thereunto was annexed :

*A Manifest of the Cargo of the Ship Victoria, Capt. Ga-
briel Aschbohm from St. Petersburg to Leghorn.*

A a 2

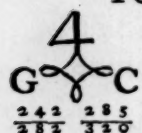
For

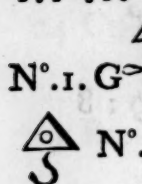
CASE XIII.

For *P--tt* and *L--k* of *J--n B--ff*

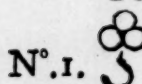
	3927 Barrs Iron, Pood 5000	valued at Rub. 83116 : 28 a 47 Stivers. Fl. 195383 : 14
	66 Casks Cavier, P. 1975 : 20 lb.	
	300 Packs Ruffia Hides, P. 7676 : 20 lb.	
	50 ditto Wax, P. 500	
	79 ditto Ruffia Hides, P. 1655 : 17 lb.	
	65 Bundles Hemp, P. 3217 : 20 lb.	
	47 Packs Ruffia Hides, P. 1191 : 48 lb.	

For *T--n* and *P--s* of *H--b C--g*

	83 Packs Ruffia Hides, val. Rs. 10125	
	a 47 Stivers	23793 : 15

	41 ditto Wax,	Rs. 3710 } Rs. 4560 .. 10716 850
	7 ditto Ruffia Hides	

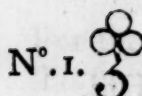
For *Le B--r* and *B--e*

	a 14.	14 Packs Ruffia Hides, worth	4000
---	-------	------------------------------	------

For *S--r* and *M--ff*

	5.	5 Packs Ruffia Hides, Value	1000
---	----	-----------------------------	------

For *J--n B--ff*

	a 10.	10 Bales Ravensduck,	
		Rub. 1062 : 45	2496 : 17

For *T--r P--ff W--ff*

	24.	24 Casks Cavier, valued Rub. 1046	2458 : 2
N°.	I.	a 24.	

Fl. 239848 : 8

Hereunto

Hereunto was affixed:

An Account of the Demand for the Damage happened to the Ship called the Victoria, commanded by Capt. Gabriel Aschbohm, and the extraordinary Expences disbursed in saving the Ship and Cargo on her Voyage from Croonstadt in Ruffia to Leghorn. In order to be adjusted and divided as general Average upon the said Ship and Cargo.

It appears from the Translation of an Instrument dated the 9 October 1747. and which contains a Declaration made on the 6 ditto by the Mate, Boatswain, Carpenter and three Seamen, all belonging to the said Ship, before the Notary and Auditor General at *Copenhagen*, and confirmed under Oath the 9 ditto before the Chief President, Burgomasters and Counsellors of that City, all which is likewise more at large set forth and attested in the sundry Instruments herein afterwards to be referred to (in all which Translations the Originals thereof are inclosed): That this Ship was loaden at *Croonstadt* with Iron, Cavier, Ruffia Hides and other Marchandize, and departed with the same for *Leghorn* on the 2 September 1747. in good Condition. That on the 13th they passed by *Ertbolm* and on the 14th by *Moen*, and then the Weather becoming very thick with Rain, Thunder and Lightning, they durst not venture to make the Flats, but remained that Night at Anchor, which having weighed again on the 15th in the Morning, and steering their Course for the Buoy of *Drago*, they had the Misfortune, notwithstanding all their Precaution the Ship was turned athwart by the Storm, got a-ground, lost its Way and was no longer to be governed by the Rudder, but sat fast immediately, that they then put out their Boat, and carryed out an Anchor, but could not get the Ship off again, they therefore hoisted a Signal of Distress, in order to get Assistance, whereupon a Boat and some People soon came a-board from *Drago*, with whom they agreed for 450 Danish Rix-dollars to get the Ship a-float and bring off the Goods, after which a great Number of Hands came on Board in Vessels, and having taken out part of the Cargo, they heaved the Ship off by main Strength, and got her a-float, but very much damaged by violent beating on the Ground
and

N^o.D.

CASE XIII. and against large Stones, that after this she was brought to an Anchor, on the 16th, while the Wind was very high and the Weather very thick, they began to heave at the Capstern in order to get up the Anchor, and to take that Part of the Cargo, which was unloaded, on board again in the Road of *Copenhagen*, but the Wind was so violent, that they could not possibly purchase their Anchor, upon which they veered out almost the whole Cable, but as the Anchor itself parted soon after, they then let go a second, the Wind all this While strongly encreasing with Showers of Rain, when the first Cable parted, upon which the Ship riding only with the other Cable, which they had veered out to the very End, this Cable likewise soon parted afterwards by the Violence of the Storm, and then the Ship drove. Whereupon they hoisted their Fore-sail and Fore-top-sail to bring her too, and then cut away the two Cables for the Benefit and for saving of Ship and Cargo, and the Ship then coming too, they sailed for the Road of *Copenhagen*, and came to Anchor there, where they took the Goods, which they had unloaded, in again, and likewise received on board again the two Anchors, they had cut away, and were fished up by the Pilots of *Drago*. After which the Captain having examined the Ship; and the Mate as well as the Rest of the Ship's Company declaring, that they would not pursue the Voyage, without the same was first repaired and fitted out again, he thereupon went on Shore for that Purpose, and on the 20th they got a King's Pilot on Board, on the 23d the Ship was brought within the Boom, and afterwards to the Ship Builders Wharf belonging to the Agent *Andreas Björn*.

Nº. E. It further appears from the Translation of an Instrument, being a Declaration made and swore to as before on the ensuing 3 and 5 February 1748 by several of the Ship's Crew, that they were obliged to unload their Cargo there, in order to have the Ship repaired, which was done accordingly, after the same had been legally inspected and the Damage been valued by Persons appointed for that Purpose (according to the translated Instrument dated the 2 November 1747.)

Nº. F. That on the 5 January 1748 the Ship was put in good Condition, and the Cargo taken on Board again, as likewise the Sails and other Ship's Materials together with necessary Provisions, so that

that they were ready for unmooring the Ship, but durst not venture it, because it blew so very fresh towards Evening, and when the Weather cleared up on the 10th ditto, the Frost set in so severe. that Night, that the Water was entirely froze over so hard, that People could pass the Ice, which continuing to the 15th ditto, it was then resolved, to cut the Ship out of the Ice, and to nail Boards round about it, in order to fence it against the Ice. That on the 16th they endeavoured to break through it, and to move the Ship, but by the Continuance of the Frost were obliged to deferr it till the 20th, when the Ship was with much Difficulty on the 2 Febr. brought through the Ice (which was forced to be cut open every now and then) into deep Water, free from the floating Ice. But that nevertheless for the Preservation of Ship and Cargo, they were obliged to continue laying there till the 13th April, by Reason of this continual Frost, and the Floating of the Ice, when they sailed from thence and pursued their aforesaid Voyage; All which is more at large set forth in a third Declaration made and sworn to in Manner as above mentioned by some of the Officers as well as Sailors on the 6 and 8 April, and is likewise confirmed by a Letter from the Captain to the hereunder written dated the 11th April.

N^o. G.

N^o. H.

By Means of all these Disasters and Accidents abovementioned the following Damage has been occasioned, and the following Expences have been disbursed for the Preservation of Ship and Cargo, viz.

The Translation of the Instrument, which contains the Report of the five Persons appointed at the Request of the Captain by the Court of Justice at *Copenhagen*, shews, how they valued the Damage, that happened to the Ship and its Materials by running a-ground, and by the breaking and cutting of the Cables. Whereof only the following, being the cutting of the Cables, is brought here, as valued by them, viz.

The same weighed 26 Shippounds, and were
worth 15 Rlrs. *per* Shipp. makes *RixDr.* 390
Deduct the neat Proceed of that Part thereof,
which was saved and sold, being

N^o. I.

Remain

RixDr. 354 : 2

Which

CASE XIII.

Which at 13 per cent. make *Hollands*
Rix-dollars 313 : 26 Stiv. which is

Fl. 783 : 16

Paid to the People, that by their
Assistance, and with the Help of
their Vessels, hove the Ship and
Cargo off from the Ground
as afore-said, according to
the Agreement, mentioned in
the translated Instrument under

N^o. K.

Rect. Let. G. and as *per* Receipt,
N^o. I. N^o. I. - - Rix Drs. 450

- | | | | |
|----|---|---|-----|
| 2. | For Pilotage to <i>Copenhagen</i> | - | 4 |
| 3. | Salvage of the 2 Anchors | - | 20 |
| 6. | Warehouse-Rent and Lighterage
for keeping and preserving the
Cargo during the Time that the
Ship was repairing | - | 420 |
| 7. | Wages to the Ship's Company (as
<i>per</i> Receipt, N ^o . 7. at the Con-
clusion) underneath. | | |

Disburfed during the Time
of Repair,

For 3 Yns, 24 Days Rlrs. 74

2 Pickketets 8

3 Shroftietten 12

2 Swagboomen 8

3 Large Lighters 18

4 Props in the Hold a-

gainst the Mast 8

Scaffold - 5

Port-Money - 7:5:4

To receive the Cargo,
and deliver it again 36

176:5:4

1070:5:4

For

Cases of Insurances.

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CASE XIII.

Rect. For Medicines in the Sickness of
N°. 11. some of the People, as *per* Re-
ceipt - *Rix Drs.* 10: 4: 14

12. — the following from the
Account of *S. G. Kruger*,
Travelling Expences to *Copen-*
hagen *Rix Drs.* 16
Postage - 5: 16
————— 21: 16

14. To *Hinrichsen*, the Surgeon,
in the People's Illness 4
To ditto, for Physic 5: 4: 2

15. For sundry, as appears

16. from an Account of
the Broker *C. Wilder*
(who assisted the
Captain) and is sign-
ed by him, *viz.*

For Waggon-hire *Rix Drs.* 4: 4: 8

Boat-hire, 2 Post-stages 1: 2: 12

Pilotage from the Road

to the Wharf 6

the first Declaration 4: 4: 8

To the Magistrates, for

the Oath to ditto 6: 3

the Appraisers (see E.)

for their Trouble and

Expences 17: 4

the Magistrate, for ap-

pointing the Appraisers 3: 1: 8

the Messengers relating

thereunto - 1

For Porterage of unloading

the Cargo 20: 3

Ditto of carrying the

same on board again,

and stowing away 42: 2

Drink-Money to encour-

age them to be more

expeditious 3: 3: 12

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B b

Hire

CASE XIII.

Hire of five single Jacks	
	<i>Rix Drs.</i> 33:2
Ditto of five double ditto	37:3
Materials in stowing the	
Cargo	6:4
At the Custom-House, and	
to fundry, for entering	
the Ship in, and clear-	
ing it out again	15:4
For unloading in the Road	6
To the said Broker him-	
self, for his extraordi-	
nary Trouble and Af-	
fistance of the Ship and	
Cargo, &c.	50
	261:2

17. For cutting the Ship out of the
Ice, according to Agreement
and Receipt - - 94

Rix Drs. 1467:5:4

- a 13 per cent. Discount, make *Hollands*
Rix Drs. 1299, being - - 3247:10

N°. L.

For Lodging, Board, and Ex-	
pences of the Captain in 127	
Days a-shore	<i>Rix Drs.</i> 52:30
26. For Beer during that Time for	
the Porters who unloaded	
and loaded the Ship again	43:44
27. Paid for two Declarations	11:36
	<i>Rix Drs.</i> 108:14

239:10

N°. M.

5. Damage to a Jack (G)
which broke in stow-
ing *Rix Drs.* 4:4

Lodging

Cases of Insurances.

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CASE XIII.

Lodging and Board of the
People a-shore, while
the Ship lay on her Side,
and Travelling Expens-
ces of the Captain to
Elfsneur (H)

17:4:12

For Labour and Wood to
preserve the Ship from
the floating Ice, when
it was cutting out, which
has not been valued, but
put at least at (B)

25

29. According to the Account
(N°. 29.) in the above
Instrument under Let.
G, the Monthly Wages
and Provisions for 18
Seamen, from the 26th
of *Sept.* 1747, when she
run a-Ground, and dur-
ing the Time she was
got off again, and
brought into the afore-
said Port, where she
was repaired, being to
the 3d of *Feb.* 1748,
make 4 Months 11
Days, in all

812:1:4

Ditto from the 3d of *Feb.*
to the 8th of *April*,
1748, following, so long
they were obliged to lay
there, according to the
Declaration marked Lt.
C. being 2 Months and
5 Days, and amount
to

403

1215:1:4

N°. N.

B b 2

To

Cases of Insurances.

To the Notary for the 3d
Declaration, Let. C. 4:4:8

To the Magistrates for
ditto - - 6:3

To the Broker, for his
Trouble about it 2

13:1:8

The Captain's Diet and
small Expences con-
cerning the above, from
the 3d of Feb. to the
8th of April, 1748 (H) 12

For Brokerage of Bills of
Exchange, Postage and
Commission charged by
Cl. Hs. Gustmeyer at
Copenhagen, in his ge-
neral Account, in three
Articles -

174:3:5

186:3:5

N°. O.

Rix Drs. 1462:2:13

Make at 13 per cent. Discount Hollands

Rix-dollars 1294:12, or

3235:12

N°. P.

Premium of Assurance of Fl. 8500, disbursed
for the Salvage of the Ship and Cargo, with
the Premium of 12 per cent. and $\frac{1}{2}$ the Po-
licy added thereunto -

Fl. 1021:16

N. B. This Premium of Assurance comes instead of
the Interest upon Bottomree, which must else
have been charged, and would amount to a good
deal more.

N°. Q.

Paid to , the Translator, for translating
the several Instruments abovementioned,
as per his Bill - -

61:8

N°. R.

To the underwritten (the Widow Cd. Ch--s
and S--n) for their manifold Trouble, and
the Assistance they have afforded towards
saving Ship and Cargo during the Time

above-

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CASE XIII.

abovementioned; their writing and receiving of Letters, with the Postage paid for them, disbursing the Sum of 8500 *Fl.* and upwards, making Insurance for the same, and likewise for Interest of Money advanced as *per Account* - 512

To *A. Mylius* for settling, soliciting, and taking out this general Average, &c. with the Stamp - 100

N^o. S.

N. B. *Fl.* 9201 : 12

Fl. 9202

Amsterdam, 1748, May 16.

(was signed)

C---d Cb---r, Widow, and Son,
as Agents for the said Ship.

Agrees with the several
Originals respectively
signed,

Amsterdam, the 10th of *June*, An. 1748.

BENJAMIN PHAFF,

Not. Pub.

We the underwritten Public Notaries in *Amsterdam* do certify and attest, that *Benjamin Phaff*, who has signed the above, is likewise a Public Notary here, and that full Credit and Belief is always given, as well in as out of Court, to all Copies, Acts and Instruments passed before him, and signed by him accordingly. In Witness whereof we have signed these Presents in *Amsterdam*, the 10th of *June*, 1748.

H. BARELS,

Not.

S. DORPER,

Not.

D. VAN DEN BRINK.

Not.

Honour-

Cases of Insurances.

Honourable Sirs,

N^o. T. **T**HE Deputies nominated and appointed by the Worshipful Magistracy, for settling the Average upon the Swedish Ship called the *Victoria*, commanded by Captain *Gabriel Asebbom*, with Respect to the Charges the said Master has been at by running into the Port of *Maaßland*, in the *Downes* and at *Dover*, for the common Benefit, and for the Preservation of Ship and Cargo, in order to pursue his Voyage, which Charges as well as the Bottomry, the Detention of the Ship for four Days, and the Expences attending this Reference with Our Commission must be divided upon the full Value of the whole Cargo, the half of the Ship and one third of the Freight, make their Reports as follows:

First comes a Specification of the neat Value of the Goods, whereof this Cargo consisted, the half of the Ship and one third of the Freight.

Shipped to the Consignment of Mess. *R-u*, *M-a* and *P-t*

R	{	3927 Three thousand nine hundred twenty seven Barrs of Iron	cost	<i>Fl.</i> 166410	<i>Dol.</i> 70023
		66 Sixty six Casks Cavier			
		300 Three hundred Packs Ruffia Hides			
		79 Seventy nine Packs ditto			
		50 Fifty Packs Wax			
ID	{	47 Forty seven Packs Ruffia Hides	-	17880	7524
G	C	83 Eighty three Packs Ruffia Hides	-	23800	10015
	{	41 Forty one Packs Wax	}	10725	4513
		7 Seven Packs Ruffia Hides			
Shipped					

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CASE XIII.

Shipped to the Consignment of Mess. *H-r* and *Y-y*

65	Sixty five Bundles Hemp	11085	}	5716
10	Ten Bales Sail-cloth	2500		

Shipped to the Consignment of the Widow *M-l* and *C-n*

14	Fourteen Packs Ruffia Hides	4000	1683
----	-----------------------------	------	------

Shipped to the Consignment of Mr. *P. H. H-s*

5	Five Packs Ruffia Hides	1000	420
---	-------------------------	------	-----

Shipped to the Consignment of Mr. *A. B-i*

24	Twenty four Casks Cavier	2450	1031
----	--------------------------	------	------

Fl. 239850 *Dol.* 100925

The half of the Ship amounts 4500

The third Part of the Freight amounts to 2300

Total *Dol.* 107725

Next follows the Specification of what is to be distributed as Average.

Two hundred forty four *Doll.* eight *Soldi* and one *d.* to re-imburse the same Sum laid out by the Captain for the common Benefit by touching at the Ports of *Maast-land*, *Downes* and *Dover*, in order to be repaired, and get his Clearance, including therein the Bottomry of 12 per Cent. according to Your Honours Decree

Dol. 244 : 8 : 1

N^o. U.

Further for the Demorage of four Days, that the Ship was detained by the abovesaid Means

22

For Consulage at *Leghorn*, and other Expences in that City, for Summons and Translating the Writings delivered in

22

For the Fees in this Cause taxed at

49

For Our Commission

2

Dol. 339 : 8 : 1

Which

CASE XIII.

Which Three hundred thirty nine *Doll.* eight *Soldi* and 1 *d.* being the Amount of the said Expences, when divided upon the One hundred seven thousand seven hundred and twenty five *Doll.* of $\frac{1}{R.}$ as the neat Valuation of the Goods, this Ship had on board, half the Value of the Ship, and one third of the Freight, comes out as follows :

For every hundred Dollars	<i>Dol.</i> 6 : 3 $\frac{1}{2}$
For every thousand Dollars	3 : 3

This is, what we have to report to Your Honours in Conformity to Your Sentence of the 3d inst. and which we do hereby accordingly, &c. *Pisa* the 5 October 1748.

Your Honours

obedient Servants

GIO. BATT. FIESOLI,
GIO. BATT. BERROTTI.

The 5th October 1748.

*The Honorable Gentlemen Counsellors for maritime Affairs
in the City of Pisa, &c.*

In the Cause for Determination of the Average, between Capt. *Gabriel Aschbohm*, Commander of the Swedish Ship called the *Victoria*, on the one Part, and Mr. *P. W. H-s*, and other Receivers of the Cargo of the said Ship, on the other Part:

Having heard the above Calculation read, and considered thereof, we approve the same, and it is our Pleasure, that the same shall be regarded as approved of in every Part, and command a due Observance thereof accordingly. In Presence of

RANIERI MAGNOLFI }
GAETANO CURRINI } as Witnesses.

GIOV. GAET. MAESTRINI, Coadj.

We the underwritten Counsellors at Law, dwelling in this City of *Leghorn*, do herewith certify to every one, whom it may concern, that the abovementioned Mr. *Gio. Gaet. Maestrini*, is Coadjutor to the Magistrates of *Pisa*, as he has signed himself, and that full Credit and Belief has always

ways been and is still given to his Handwriting as well in CASE XIII.
as out of Court, Witness

J. D. FRANCESCO MARCHESINI, attest as above, &c.

J. D. GIO. FRANC. NIBBI, attest, &c.

This present Attestation was signed, delivered and swore
to by the above Messieurs, *Franc. Marchesini*, and *Gio.
Franc. Nibbi*, Doctors, in the Presence of me the under-
written Notary. In Witness whereof

I ANTONIUS CHIOCHINI, *Not. Publ. Florent.*
have signed the same.

We the underwritten Merchants, dwelling in this City of
Leghorn, do certify, that Mr. *Antonio Chiochini*, who has
signed the above, is a Publick Notary of *Florence*, as he
writes himself, and that full and undoubted Credit is given
to his Acts and Handwriting as well in as out of Court.
Witness

GIUSEPPE PINFOLD,
GUGLIELMO AIKMAN.

In the Name of God, Amen!

We, *Nicolo Cambi* and *C. Quintilio Galcotti*, Noble Floren-
tines, and by His Imperial Majesty's Authority Counsellors
for maritime Affairs in the City of *Pisa*, and Judges in Or-
dinary of all Causes, whether Civil, or relating to Naval,
mercantile or intermixt Affairs:

In the Cause depending before Us and Our Court be-
tween Capt. *Gabriel Aschbohm*, commanding the Swedish
Ship called the *Victoria*, Plaintiff on one Part, and Mr. *P.W.
H-s* and other Merchants, Receivers, Respondents, on the
other Part:

We having perused the Remonstrance delivered by the said
Captain as Plaintiff, setting forth, &c.
... The Certificate from the Consul delivered
at the same Time, containing, &c.
... other Papers produced likewise by the
said Captain of the following Contents, &c.
... Another Petition of ditto Captain, and Te-
nor as follows, &c.

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C c

A Writ

Cases of Insurances.

- CASE XIII. A Writ of Exceptions by the said Mess.
R-u, M-a and P-t, containing, &c.
 A Reply of the said Captain of the fol-
 lowing Contents, &c.
 Another Plea of Exceptions of the above-
 mentioned *R-u, M-a and P-t*, setting
 forth, &c.
 A Writing of Justification of the said Cap-
 tain, of the following Tenor, &c.
 Two Summons's, delivered by Word of
 Mouth in Behalf of the respective Parties
 to their Solicitors, &c.
 The Summons for this Day and Hour, in
 order to give Judgment after every Thing
 else requisite was read over, and the Cir-
 cumstances to be considered, had been
 maturely weighed, and

N^o. W. Once again imploring the most holy Name of God, We say, pronounce, adjust and declare, That the Case of Captain *Gabriel Aschbohm*, commanding the Swedish Ship called the *Victoria*, against Mess. *P. W. H-s* and others, Receivers of the Cargo of said Ship, as the same is set forth, represented, reported and petitioned for by him the said Captain, is conformable to the Truth, and otherwise so circumstanced, as the same can lawfully be pretended, demanded or obtained: We do hereby declare, that the said Captain, the abovementioned Ship and his Ship's Crew shall be acquitted and cleared, and We accordingly acquit and clear them herewith from all and every Losses, Detriments, Damages by Sea-Water or Waste, that have already been found, or may still be discovered hereafter on any Part of his aforesaid Cargo, which he carryed to *Leghorn*, and there discharged, since those Losses, Detriments, Damages and Wastes were occasioned by the Storms he met with and endured by the Ship's running on the Sands near *Drago*, by unloading and taking the Marchandize on Board again, first in the said Place, in order to lighten the Ship and to facilitate the getting her and Cargo off again, next in the Road of *Copenhagen*, where he likewise unloaded, that he might be able to have his Ship repaired,

paired, and to prosecute his Voyage, as likewise by being met and detained by several Privateers during the Voyage, which he made with his said Ship and Cargo from the Port or Road of *Cronstadt* to *Leghorn*, and not by any Fault, Mistake or Neglect of the Captain, the Ship or its Crew; Acquitting him, as We do hereby acquit him from the said Losses, Damages and Wastes sustained on these Goods to the Prejudice of the Persons to whom they do or may belong, and who have run the Risk of Wind and Weather upon them; Condemning, as We hereby do, the said Mess. *P. W. H.*s and other Receivers to pay to the said Captain clear and truly the full Freight expressed in the Bill of Lading or other Contract for Freight, without the least Deduction or Abatement, not only for the Goods, which he has brought to *Leghorn*, and delivered there entire, dry and in good Condition, but also for those, which were damaged, spoiled and rotten; And We, moreover, condemn the said Gentlemen Receivers, to contribute along with the abovementioned Captain towards the Average, the first according to the Value and Prices of the Goods, and the other for half the Value of the Ship and one third of the Freight, in order to satisfy and indemnify the Charges, which the Captain has disbursed for the common Benefit by running into the Port of *Maastrand*, and likewise into the *Downes*, whereto he was carried with his Ship and Cargo by an *English* Privateer, and obliged to go from thence to *Dover* to enter his Protest against the Captain of the Privateer, all which Expences together We have adjusted at the Sum of Two hundred forty four *Doll.* eight *Soldi* one *d.* of *R.*; including in that Sum the Bottomry at the Rate of 12 *per Cent.* as well as the Provisions and Pay of the Ship's Company during four Days, that they were detained, to procure the Release of Ship and Cargo from the Attachment of the Privateer, which We also settle at Twenty two *Doll.* of *R.*, conformable to which, with the Addition of the Law Charges, and the Commission of the Calculator, the neat Adjustment is to be made, and We do hereby depute and appoint Mess. *Johan Baptista Fiesoli* and *Johan Baptista Berretta* to make the said Adjustment accordingly, reserving to Ourselves however the Approbation thereof.

No. X.

CASE XIII.

N^o. Y.

Further, We declare that the Regulation of the Average concerning the Loss and Expences, which the said Captain has suffered, as well by bringing the said Ship off from the Sands near *Dragoe*, where it sat fast; as also by unloading and taking the Goods on board again, first in that Place, and afterwards in the Road of *Copenhagen*, for Causes and Reasons hereabove specified, and more at large set forth by several Acts, referred to in the said Regulation, as the same has been settled by the Gentlemen Commissioners of the Chamber of Assurances and Averages at *Amsterdam*, shall stand, and is hereby confirmed: And we accordingly condemn the said Mr. *H---*, and the other Gentlemen Merchants and Receivers, that each of them do make good and truly pay to the said Captain so much as the Proportion upon their respective Shares amounts to at the Rate of 3 Dollars, 11 Soldi of $\frac{1}{12}$ *per Cent.* at which the Average has been settled at *Amsterdam*, which Average is to be reduced into Dollars of $\frac{1}{12}$ in the Regulation which we have ordered to be made hereabove; and we dispense hereby with all and every necessary, customary and lawful Ordinances, as well in regard to the abovementioned Average, as also to that which is to be settled at *Leghorn* as aforesaid, and likewise to the Freights, as above, &c. and therefore, &c. not only, &c. but in all other Respects, &c.

This present Sentence was and is herewith given, by the abovementioned illustrious Lords Counsellors for Maritime Affairs in the City of *Pisa*, and was read and published by me the Underwritten, this 3d Day of *October*, 1748, in Presence of

RANIERI MAGNOLFI,
and
GAETANO CURRINI,

} Witnesses.

GIO. GAETANO MAESTRINI, Coadj.

We the underwritten Counsellor at Law in this City of *Leghorn*, do certify for the Truth to every Body whom it may concern, that the abovementioned Mr. *Gio. Gaetano Maestrini* is Coadjutor in the Court of Justice at *Pisa*, as
he

he stiles himself, and that full and undoubted Credit al-ways has been and is still given to his Hand-writing, as well in as out of Court. *Witness*

I Dr. *FRANCESCO MARCHESINI*,
testify as above with my own Hand-writing.

I Dr. *GIO. FRANCESCO NIBBI*,
attest, &c. with my own Hand-writing.

This present Attestation was signed, delivered, and swore to upon the Holy Bible, by Messrs. *Francesco Marchesini*, and *Gio. Francesco Nibbi*, Doctors, Counsellors at Law, in this City of *Leghorn*, before me the underwritten Notary. In Witness whereof, &c.

(L. S.) *PANTONIUS CHIOCCHINI*, *Notarius Publicus Florentinus*, have signed the same to the Glory of God. 1748.

We the the underwritten Merchants dwelling in this City of *Leghorn*, do certify for the Truth to every Body whom it may concern, that Mr. *Antonio Chiocchini* is a Public Notary of *Florence*, as he has signed hereabove, and that full and undoubted Credit always has been, and is still given to all his Acts and Hand-writing, as well in as out of Court.

Witness

GIUSEPPE PINFOLD,
GUGLIELMO AIKMAN.

Extract from the Captain's Protest at Leghorn.

On the 2d of *April*, New Stile, sailed from *Copenhagen*, in 12 Hours passed the *Sound*, and in Days found himself on the Height of *Masterland*, with a great Storm, and let go his Anchor to stop the Current, drove a-ground, got off again the 16th, and went under Sail, and the second of *May* was visited by a *Flemish* Privateer upon the *Zingels*, and afterwards by an *English*, who took from him 24 *l. Sterl.* and afterwards another, who carried him into the *Downs*, where he was

Cases of Insurances.

CASE XIII. was detained 4 Days, and the 5th Day sailed again; was afterwards fired at by another Privateer, who made him pay 9*l.* *Sterl.* for firing; the 26th of *June* was visited by an *English* Privateer at the Isles of *Hieres*, who robbed him of 2*l.* *Sterl.* the 2d of *July*, Old Stile, arrived at *Leghorn*.

These Averages

N.B. From <i>Amsterdam</i> at £. 3 : 11	} were adjusted at <i>London</i> by the <i>Royal Excha.</i> and <i>London Assurance Com-</i> <i>panies</i> at £. 3 : 6 per cent.
From <i>Leghorn</i> at 6 :	

CASE XIV.

C A S E XIV.

Shewing how a particular Average on Sugar was calculated at Hamburgh.

Hamburgh. Anno 1721, the 1st July.

ASSURANCE made for Account of Mr. C---s C---o de C---o from *Lisbon* hither for the Sum of 3000 Marks Banco upon 10 Chests Sugar, shipped by him on board the *Antonetta* Galley, Capt. *Jeronymus Thormoy*, which, according to Bill of Loading and Invoice, amount to 826m512 Rees, and are valued in the Policy at 4 Mks per Mill. Rees, without Premium, is

Nº. A.	Mks. 3306 : 1
Premium a $7\frac{1}{4}$ per Cent.	239 : 11
Premium upon ditto a $7\frac{1}{4}$ per Cent.	17 : 5
	Mks. 3563 : 1

Whereupon have been insured Mks. 3000
and left uninsured 563 : 1

Mks. 3563 : 1

The above 10 Chests have, as per Invoice, weighed in the Country neat 375 Arrobes 22 lb. which at 30 lb. make 11272 lb. of our Weight, and amount at $9\frac{1}{4}$ d, with $8\frac{1}{4}$ per Cent. Discount, to

Mks. 2998 : 7

But

But as the above 10 Chests proved damaged by Sea-Water, they were sold by Order of the Assurers to the best Bidder.

N ^o . 36, 37.	2 Chests neat	1955 lb.	a 7 $\frac{1}{8}$	Mks. 484 : 15
48,	1	926	a 8 $\frac{1}{8}$	233 : 5
44,	1	111	a 6 $\frac{1}{8}$	23 : 3
42,	1	977	a 7 $\frac{1}{8}$	236 : 10
38, 43	} 5	5314	a 9 $\frac{1}{8}$	1536
45, 47, 50				

Mks. 2514 : 2

Deduct 8 $\frac{1}{2}$ per Cent. Discount 200 : 8

Mks. 2313 : 10

Deducted from 2998 : 7

Makes the Loss Mks. 684 : 13

N^o. B.

To which must be added for *extra* Charges,

To the Captain, for general Average of

Mks. 2500, a Mks. 4 : 3 : 6 105 : 8

To *Preus*, the Notary, for Attestations, &c.

4 : 8

For Brokerage of 5 Chests sold at Public Sale.

7 : 8

Cooperage and Portorage

2 : 8

Mks. 804 : 13

Deduct *Agio* of Mks. 120, a 130 per Cent. 27 : 11

The whole Loss Mks. 777 : 2

The above Mks. 777 : 2 being divided on the Value of Mks. 3000 Banco, come to Mks. 25 : 14 : 6 for every Mks. 100, as the Valuation of the 4 Mks. Banco, per Mill. Rees is not insisted on, in order to show the Equity to the Assurers.

N^o. C.

(was signed)

J. G. W. R.

REMARKS.

CASE XIV.

REMARKS.

- N^o. D. In the above Calculation of the Loss it is not justly observed, that in Order to shew the Equity to the Assurers, the Valuation of 4 Mks. *per Mill*. Rees was not insisted on, and by that Means in the Division upon Mks. 3000, the Loss amounted to 23 Mks. 14 s. 6 d. *per Cent*. For it appears at first View, that upon the Amount of 3563 Mks. 1 s. as they were valued, the Loss would come to no more than 21 Mks. 13 s. 2 d. for every 100 Mks. and ought to be reckoned as follows:

Upon Mks. 3000 for the Assurers Mks. 654 : 11

563 for the Proprietor, on so much he was uninsured

122 : 5

Mks. 777

- N^o. G. But if we reflect, on the other Hand, that the first Cost of these Sugars, as it was valued, amounted to Mks. 3563 : 1, and if they all had arrived sound, could have been sold for no more than Mks. 2998 : 7, from which the Freight and Charges are still to be deducted; which demonstrates that these Sugars, even free from Damage, would have rendered no small Loss to the Proprietor, and therefore the said *J. C. W—r*, in deducting of what the Sugars now produced, *viz.* Mks. 2312 : 10
from what they would otherwise have yielded,

being - - - 2998 : 7

- N^o. H. has shown more Equity than probably many others would have done, if the same Case had befallen them.

- N^o. I. However, to make this Account quite exact, the same might have been stated in the following Manner :

Five Chests of Sugar damaged, weighed at *Lisbon*, as *per Invoice*, 186 Arr. 30 lb. which, at 30 lb. *per Arr.* make in *Hamburg* (but this Calculation being compared with the Weight of the sound Sugar, it will be found that an Arrobe of Sugar from *Lisbon*, after Deduction of Tare Allowance for good Weight and Sweepings, produces only 28 $\frac{1}{4}$ lb.)
5602 lb. 29 $\frac{1}{4}$ *per Cent.* - - - Mks. 1621 : 1
Deduct 8 $\frac{1}{4}$ *per Cent.* Discount - - - 129 : 4

Mks. 1491 : 13

C H A R-

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CASE XIV.

CHARGES.

Freight, a Mks. 14 per Chest	Mks. 70
Ordinary Average - - -	7
Primage and Stader Duty - -	5 : 10
Custom a 18 $\frac{1}{2}$ Speties per Chest. with 30 per Cent. Agio - - -	7 : 8
Admiralty, of Mks. 700 with 15 per Cent. Agio - - -	8 : 1
Lighterage, Porterage, and Coöperage	3 : 12
Brokerage, a 1 $\frac{1}{2}$ Mks. - -	7 : 8
Mks. 109 : 7s. a 130 per Cent.	84 : 4
Commiffion a 2 per Cent. - -	29 : 13

114 : 1

If there had been no Average, they would have
produced - - - Mks. 1377 : 12
But now the same were damaged, they fetched
only :

N°. K.

2 Chests 1955 lb. a 7 $\frac{1}{8}$ gr.	Mks. 484 : 15
1 926 a 8 $\frac{1}{8}$	233 : 5
1 111 a 6 $\frac{1}{8}$	23 : 3
1 977 a 7 $\frac{3}{4}$	236 : 10

Mks. 978 : 1
78

Deduct 8 $\frac{2}{3}$ per Cent.

Mks. 900 : 1

Ordinary Charges, as above	Mks. 84 : 4
General Average - - -	105 : 8
Preus, the Notary - - -	4 : 8
Commiffion a 2 per Cent.	18

212 : 4

Mks. 687 : 13

Consequently they yielded less

689 : 15

N°. L.

Mks. 1377 : 12

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D d

Which

Cases of Insurances.

CASE XIV. Which Mks. 689 : 15 being divided upon the abovementioned Sum of Mks. 3563 : 1, according to the Valuation in the Policy, but which, by an exact Computation, comes to Mks. 3564 : 8, will make $19 \frac{7}{8}$ Mks. to be paid by every 100 Mks. whereof ought to be charged

	To the Assurers, on Mks. 3000,	insured Mks. 580 : 8
	To the Proprietors on	564 : 8 not insured 109 : 4
N ^o . M.	Mks. 3564 : 8	Mks. 689 : 12

C A S E XV.

CASE XV.

*Shewing how a particular Average was computed at
Hamburgh upon some Goods shipped for Cadiz.*

N^o. A. *H. B.* at Hamburgh shipped in the Year 1719, for Account of *J---n P---n*, at Cadiz, on board the Ship *Cadiz* Galley, Capt. *Andrew Gottschall* for Cadiz,

6 Chefts Silesias, Qt. 288 Shock, a $6 \frac{1}{2}$ Rix-	
dollars, with $8 \frac{2}{3}$ per Cent. Discount	Mks. 5168 : 2
1 Pack Qt. 306 ps. Sangall, a 5 Mks. 14 s.	1797 : 12
2 ps. <i>Hohenst.</i> Wrappers	27
2 Packs Qt. 206 ps. <i>Breslau</i> Linnen, a $7 \frac{1}{2}$ Mks.	1545
2 ps. <i>Hohenst.</i> Wrappers	26 : 8
1 Pack Qt. 118 ps. <i>Freist</i> Linnen, with $8 \frac{2}{3}$	
per Cent. Discount	651 : 9
1 Pack Qt. 296 ps. Lawns, a 7 Mks. 13 s.	
with $8 \frac{2}{3}$ per Cent. Discount	2128 : 1
For Duty outwards, and Charges	211 : 12
Commission a 2 per Cent.	231 : 1
	Mks. 11786 : 13

Premium of Mks. 11000, Assurance a 5	
per Cent. Commission $\frac{1}{2}$ per Cent. Bro-	
kerage $\frac{1}{2}$ per Cent.	632 : 8
Premium upon ditto, a 5 per Cent.	31 : 11

Mks. 12451

Accord.

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CASE XV.
N^o. B.

According to an Attestation from *Cadiz* some of these Goods were delivered damaged there, and the Damage was valued by the Appraiser, thereunto appointed at 695 Dollars 5 Rials Rpta.

H. B. computed this Sum, or 2076 Mks. upon the Capital of Mks. 12451, and demanded of the Assurers $16\frac{1}{2}$ per Cent.

The Accomptant of Averages on the contrary calculated the Capital in the following Manner

	Mks. 11786 : 13
Assurance a $5\frac{1}{2}$, and Commiffion $\frac{1}{2}$ per Cent.	677 : 11
Re-assurance	38 : 14

Mks. 12503 : 6

And for the Loss he reckoned, for Reasons which he did not specify, instead of 692 Dollars 5 Rs. only 620 Dol. or 450 Ducados, a 119 d.

	Mks. 1673 : 7
For 2 Spanish Attestations	18
For his Commiffion, a 1 per Cent.	11
For the Poor	1 : 1

Mks. 1703 : 8

Which divided upon the Capital, the Assurers stands charged with Mks 13 : 10 s. per 100.

Here the Question arises, what his Reasons might be for this Abatement from 695 Dol. 5 Rpta. to 620 Dollars? It is answered: That the Inducement to such a Deduction may have been either a Diminution of the Duties upon damaged Goods, or the Conjecture and Profit, which was included in the Valuation, as the same was made according to the Market-Prices at the Place where the Goods went to, and not where they came from: And as by the Attestations of the Appraisers commonly nothing farther is said than that they have seen a Bale or Chest of such a Mark, containing such a Quantity of Pieces or Ells of Linnen; whereupon they appraise the Sea Damage to be in the Whole so many Rials or Dollars, without explaining how much an Ell or Piece would have been worth if not damaged; and it is known that they always allow enough, so as to make it worth the Buyer's While to give the highest Market-Price for it; and therefore the Owner reasonably ought to bear

N^o. D.

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CASE XV. a Part of it upon his Profit, or deduct it in favour of the Insurers. And it is from hence that so many groundless Disputes have arose on several Occasions, and that the Accounts of Averages were in former Times seldom made up in a proper Manner, and with that due Accuracy (as is observed in these present Cases) of which the Instance before us is a Proof.

For Example: Supposing that among the abovementioned Goods the Average had happened

On 6 Chests, containing 1152 ps. Silefias, and	
among them 950 ps. were damaged, and	
such Damage valued at	Mks. 475
296 ps. Lawns, whereof 150 ps. were damaged, and this Damage valued at	217 : 5
	Mks. 692 : 5

Then the Accomptant, in order to make his Account quite exact, ought to have required to be informed,

N^o. E. *First*, The Prices at which the Appraiser rated these Goods, if they had been found.

Secondly, The Abatement in the Duties by Reason of the Average.

Thirdly, The particular Chests and Numbers of the Goods, that agree therewith, and the first Cost of them.

As for Instance, if we suppose that the said 950 ps. Silefias had all been found, and rated one with another at 17 Rpta. make

-	Rpta. 16150
and 150 ps. Lawns as above, a 30 Rpta.	4500
	Rpta. 20650

then the usual Charges would have been

The Proportion of Freight for 950 ps.

Silefias	Rpta. 156
For 150 ps. Lawns	24
Duties of 950 ps. Silefias	1187
150 ps. Lawns	374

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CASE XV.

Petty Expences	-	-	33
Commission, Brokerage, and Warehouse	-	-	
Rent	-	-	826
			<u>2600</u>

and the nett Proceed would have been *Rpta.* 18050

which at 119 *d.* per Duc. make *Mks.* 6085 : 13

But as they were damaged, compute

950 Pieces, a 17 <i>Rpta.</i>	-		<i>Rpta.</i> 16150
150 a 30	-	-	<u>4500</u>

Rpta. 20650

allowed the Buyers for the Damage

692 <i>Dol.</i>	-	-	<u>554¹</u>
-----------------	---	---	------------------------

Rpta. 15109

The Charges whereof are

Freight as above *Rpta.* 180

Duty 1561, deducting $\frac{1}{2}$ extra-

ordinary Allowance 1041

Petty Expences 33

The Attestation of the Appraiser 110

Commission, Brokerage and Ware-

house Rent, 4 per Cent. 604

1968

Rpta. 1314¹

Consequently the 18050 *Rpta.* have been lessened 4903 *Rpta.* in their Value, being at 119 *d.* per Duc. *Mks.* 1655 : 2, and makes 27 $\frac{1}{2}$ per Cent.

It might likewise be calculated according to the prime Cost of the Goods shipped, in the Manner following, viz.

288 Shock, or 1152 Pieces of Silefias amount

to *Mks.* 5168 : 2s. which for 950 ps. is *Mks.* 4261 : 14

296 Quarter Ps. of Lawn cost *Mks.* 2128 : 1s.

which for 150 ps. is 1078 : 8

Charges 100

Commission 2 per Cent. 108 : 12

Mks. 5549 : 2

Insu-

Cases of Insurances.

CASE XV. Insurance at $5\frac{1}{4}$ per Cent. Bank, and Brokerage $\frac{1}{4}$ per Cent. current Money, and reduced to Bank at 130 per Cent. make 334 : 15

Mk. 5884 : 1

The Damage ought therefore to be thus charged, viz.

Mk. 5884 : 1 To the Insurer, which at 27 $\frac{1}{2}$ is - - Mk. 1600 : 5

201 : 12 To the Owner, . . ditto 54 : 15

Mk. 6085 : 13

Mk. 1655 : 4

And proportioning the above Mk. 1600 : 5 on the whole Sum of Mk. 12451, being the amount of the Goods shipped, the Insurers, instead of $13\frac{1}{8}$ per Cent. ought to have paid no more than $12\frac{1}{8}$ per Cent.

N^o. F.

C A S E XVI.

CASE XVI.

Shewing how a particular Average on Goods shipped for Lisbon, was regulated at Hamburgh.

R E G U L A T I O N.

Hamburgh, 10 July, 1719:

BE it known, that Th. J-- and J. van B-- procured Insurance to be made on two Packs of Linnen at Hamburgh and from thence to Lisbon, in the Ship called the *Prophet Daniel*, Capt. *Albert Peters*, who sailed from the *Elbe* the 23 December, and on the 23 January met with so great a Storm, that he was obliged, for the Preservation of the Ship and Cargo, to put into *Youghall* in Ireland, and there to repair his Ship. Of all which, on his Arrival at Lisbon, he produced the necessary Certificates: authentick Copies whereof are hereunto annexed (sub Let. A.). And whereas the Linnens insured, as aforesaid, appeared to have received Damage by Salt-Water as set forth in the Certificate annexed (sub Let. B.), we make the Regulation thereon as follows, viz.

By

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By the Bill of Loading it appears, that the two Packs in- CASE XVI.
sured, as before mentioned, contained 74 Pieces of raw
Osnabrigs, measuring together 6024 Ells, and are valued
in the Policy and insured in the Sum of Mk. 2100, Bank-
Money, Premium included.

13 Pieces of the above Goods, containing 1016 Ells, were
found to be damaged by Salt-Water: therefore it is to be
computed, that as 6024 Ells are valued and insured at
Mk. 2100, so 1016 Ells will amount to *Mk. 354 : 3*
Which 1016 Ells the Appraiser declared upon Oath, that,
if they had not been damaged, they would have sold for
140 *Reis per Ell*, but in the Condition they were, yielded
no more than 90 *Reis*, by which a Loss insured of 50 *Reis* Nº. A.
per Ell, which is $37\frac{1}{2}$ *per Cent.*

The Insurer therefore ought to be charged as follows, *viz.*

For 354 $\frac{3}{4}$ Mk. at $37\frac{1}{2}$ <i>per Cent.</i> is	<i>Mk. 133 : 9</i>
For the two <i>Portuguese</i> Certificates 1680 <i>Reis</i> ,	
is	<i>5 : 5</i>
For Translating the Vouchers Mk. 8 : 4, a 130	<i>6 : 6</i>
For Commission making the Regulation, a $\frac{1}{2}$	<i>7</i>
	<i>Mk. 152 : 4</i>

Which *Mk. 152 : 4* divided on *Mk. 2100*, makes the Ave-
rage $7\frac{1}{2}$ *Mk. per Cent.* to be paid on the Whole.

JURGEN GREVE.

REMARK.

But we apprehend, that a good Deal more Accuracy ought
to have been observed in the foregoing Calculation: because it
is notorious, that an ample Allowance in the Duties is always
made on damaged Goods; and therefore the Account would
have been nearer the Truth, if it had been formed as
under *viz.*

1016 Ells.

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CASE XVI. 1016 Ells at 140 Reis, as they would have sold at,
 had they not been damaged - Reis 142m240
 Deduct 23 per Cent. from the ordinary Duty
 (which at 60 Reis per Ell, makes 60m960 14m021

 128m219

1016 Ells damaged, at 90 Reis per
 Ell - - - 91m440
 Paid only $\frac{1}{4}$ of the Duties above 4m674

 86m766

The Average would amount to Reis 41m453

N^o. B. And according to this Account it would have come out but
 at $32\frac{1}{100}$ instead of $37\frac{1}{4}$ per Cent. as settled by the preceding
 Regulation; so that the Insurers were apparently injured
 thereby.

But to have rendered it still more exact, it ought to have
 been stated in the Manner following, viz.

1016 Ells at 140 Reis, if not damaged, would
 have yielded as above - Reis 142m240

Duties - - -	Reis 14m021
Proportion of Freight -	2m752
Brokerage $\frac{1}{4}$ per Cent. -	m711
To the Poor 2 per Mille	m284
Commiffion 3 per Cent. -	4m267

 22m035

[Neat Proceeds Reis 120m205

Which at 42 d. per Cruzade makes - Mks. 394 : 6

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Brought over

Mks. 394 : 6

CASE XVI.

But by being damaged

1016 Ells sold at no more than

90 Reis - - - 91m410

Duties - - - 4m674

Freight - - - 2m752

Brokerage - - - m457

To the Poor - - - m183

Commiffion - - - 2m743

10m809

Neat Proceeds

Reis 80m631

Which at 42 d. per Cruzade is

Mks. 264 : 5

Difference

Mks. 130 : 1

Whereof the Proprietor ought to bear for his

Proportion of Mks. 40 : 3 uninsured

Mks. 13 : 4

And the Infurer on Mks. 354 in-

fured - - - Mks. 116 : 3

And for Certificates - - - 5 : 5

Translation of Vouchers 6 : 6

Commiffion on the Regula-
tion - - - 7

Make Mks. 134 : 14 instead
of Mks. 152 : 4.

C A S E X V I I .

How the Loss of a Spanish Prize, called the Nympha, was adjusted with the Insurers in London.

- I**N March 1747 the Agents of several Privateers, called the *Royal Family Privateers*, received Advice from their Commodore, that they had taken and carried into *Lisbon* a Spanish Register-Ship, called *La Nympha*, bound from *Cadiz* to *La Vera Cruz*, with a rich Cargo, which was said to be worth upwards of £. 160000 *Sterl.* The Agents ordered her forthwith to *London*, and in the Beginning of *May* began to make Insurance on this Prize, valuing her in their Policies at £. 150000, including the Premium, adding moreover the Clause: "And this Policy shall be a sufficient Proof, not only of the Amount or Value of the Interest, but also of the Property, in the said Goods, tho' not condemned.
- N^o. A.
- N^o. B. In the whole £. 105800 were underwrote from 4 to 5 Guineas *per Cent.* either in *London*, *Bristol*, or *Exeter*, and the latter End of *May* the Commodore was advised, that in this Insurance the Sea-men were to be concerned as far as £. 50000, being what their Prize Money might amount to, or what had been advanced them.
- N^o. C. It was hoped they naturally would have endeavoured, that no Time should be lost in getting this Prize home: but it seems the Merchants at *Lisbon*, who had the Commission for supplying the Squadron with Money and giving them other Assistance, did not willingly chuse to let slip the Opportunity of making a handsome Profit by so valuable a Cargo. They therefore made use of all Sorts of Persuasions with the Commodore and Officers to prove, that it would be more advantageous to dispose of the Whole at *Lisbon*, and particularly urged that it would ease the Agents in *London*, who were already in great Disburse, and on whom they still must draw, by receiving Money on Account at *Lisbon*.

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The Commodore &c. consented to a conditional Sale of a large Quantity of Quicksilver on board the Prize at the low Price of 300 Rees a Pound. On this Sale upwards of 41000 *Milrees* were paid on Account, but it was stipulated, that if the Agents in *London* approved not of it by the first Packet that should arrive, the Bargain should be void, repaying the Money with Interest at the Rate of 6 *per Cent. per Annum*. The Agents disapproved of this Sale, and sent Letters of Credit to repay the Money, repeating their Orders, that the Ship and the whole Cargo should depart for *England* with the first Convoy. A Convoy sailed in *August*; yet tho' the Agents repeated Orders came to *Lisbon* the latter End of *June*, the *Nympha* was kept at *Lisbon*, and the Privateers, instead of going on a Cruize, remained there also from *April* to *July*.

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XVII.
N^o. D.

N^o. E.

The Merchants at *Lisbon* moreover, notwithstanding the Value of another Prize under their Direction which they had sold, continued drawing large Sums on the Agents in *London*, who consequently were in very great Disburse, on Account of these Sea-men, to whom large Sums of Money were advanced, and many of them overpaid, nevertheless they were so worked upon, as to make a Sort of Protest against their Commodore, for not disposing of the Prize himself in Despight of the principal Owners and their Agents.

N^o. F.

In this Situation and Finding they could not rely upon any Orders or Instructions sent by Letters, the Agents resolved to send one of their Body to *Lisbon*. On his Arrival Things were found more embroiled then they knew of. It appeared that the Disapprobation of the Sale of the Quicksilver had not been notified in due Time to the Buyers of it, and the Delivery of it was demanded by Law. There was an Embargo laid on the *Nympha* to hinder her Departure, and a Demand was made for paying to the King 4 *per Cent.* Duty on the whole Cargo. All this seemed calculated to force the Agents to a Sale at *Lisbon*. So that the Agent sent over to get the Prize from thence, after duly weighing all Circumstances and consulting with the English Minister, found that there was a Necessity to agree, that the Bargain made for the Quicksilver with the Consent of the Commodore, &c. as before mentioned, should stand

N^o. G.

N^o. H.

CASE
XVII.
N^o. I. good for three fourth Parts and together with the other fourth Part should go in the Ship to *London*, paying £. 125 Freight for the same, and in as much as the Agents had made Insurance in *England* upon the whole Cargo and Ship together, and that both were included in one Valuation, it was agreed that the Buyers of the *Quicksilver* should participate for the Value of 48000 *Millrees* at the Rate of $4\frac{1}{2}$ per Cent. Premium in that Insurance and on the same Terms and Conditions as covenanted in the Policies in *London*.

N^o. K. Thus the *Nympha* having been detained several Months at *Lisbon* against the Will of the Agents, sailed at last in *November* under Convoy for *London*. She arrived safe at *Portsmouth*, but was unfortunately stranded after her Departure thence near *Beachy-head*, to the Consternation of the Insurers, many of whom had underwrote on her for £. 500 and even to £. 1000. They could not be blamed, if they enquired into the Circumstances of this Accident, and if it could be deemed a fair Loss, or if any Body was a Gainer thereby. In some forthwith a Suspicion arose from the Valuation of £. 150000 in the Policies, having heard that the *Spaniards* offered no more than 450000 *Dollars*, or £. 75000 *Sterl.* for this Prize, nor were they acquainted with the Contingencies, relating to the Sale of the *Quicksilver*, which remained on board, and was included in the Insurance made by the Agents tho' sold.

N^o. M. The Opinion of Lawyers being had, many of the Insurers were in great Hopes, on what they said that they should come better off, should they dispute the Valuation by Law; but the *London Assurance Comp.* (who had underwrote a pretty large Sum on this Prize, and who as well in great as in small Concerns adhere to strict Justice, and to fulfill such Terms as they had agreed and in Honour are bound to) had the true State of the Whole cleared up to them, when it appeared,

First, That the Valuation of £. 150000 by the Agents was not made with a View that that whole Valuation was to be insured by them, but, as before mentioned, £. 50000 were for the Sea-men and £. 500 for each Share of such of the Owners as desired it, leaving Room by the above Valuation

Valuation for any of the Share Holders or Seamen, if they had had a Mind to insure more, to the Sum of £. 150,000.

Secondly, That as it stood in case of a total Loss, it was very clear that the Agents could have recovered no more than £. 105800 insured at 98 *per Cent.* and it was also highly probable, that had the *Nympha* come safe, she might have yielded near or above that Sum.

For it was evident by a great Number of Invoices of the Goods found on board, that for what cost at *Cadiz* 180 Dollars, the *Spaniards*, to re-purchase the same, did not offer above 100 Dollars. And though it be known, that from the 180 Dollars cost, &c. at *Cadiz*, great Charges must be deducted; yet still there was Reason to hope the Cargo would yield more at *London* than 450,000 Dollars, which was the Offer made by the *Spaniards*, exclusive of the Quicksilver, which rendered neat at *London* £. 31210 : 6 : 2 besides 5 $\frac{1}{4}$ *per Cent.* thereof, which was lost. See Case XVIII.

Thirdly, That though it seemed as if the Officers and Seamen in bringing the *Nympha* from *Portsmouth* had acted carelessly, yet nothing has been discovered, wherein to suspect a Fraud: For it was not found that any particular Insurance had been made for those Officers; nor had any Thing been concealed by them on the Salvage. A Parcel of Gold which the Captain had taken upon Freight from a Merchant at *Lisbon*, he himself saved, and gave forthwith an Account of. As for the Agents, there was still less Room for any Suspicion, as each of them had taken a large Risk in the Policies underwrote in *London*.

Fourthly, That on this Valuation of £. 150,000, it was farther to be observed, that though it appeared as if the Insured, as well Agents, as Owners or Seamen, would reap the Benefit from the Salvage, for so much as they had insured less than that Valuation, nevertheless the greatest Part of that seeming Profit is sunk by their being obliged to make good the Quicksilver at the Rate of 3s. 1 $\frac{3}{4}$ *per lb.* as well to the Insurers as to the Buyers of the $\frac{3}{4}$ thereof, from whom they received for it only after the Rate of 1s. 10 $\frac{1}{2}$ *d.* Moreover, though this Valuation on this Occasion may turn out beneficial, yet it might have been the contrary. For Instance.:

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XVII.

stance: The *Nympha* might have been taken and re-taken in coming from *Lisbon*. To pay the Re-Capture being sold, the produced only - - - £. 120,000

The Re-Captors being intitled to $\frac{1}{4}$, is £. 15000

Whereof there would then have been to be paid, on £. 105800 insured - £. 10580
and on 44200 uninsured, there would have fallen short or lost for the Insured 4420
£. 15000

N^o. N. Upon these Considerations the *L. A. C.* thought it equitable to adjust and fettle this Affair in the following Manner:

The Goods saved, and sold at the first Public Sale which was granted free of Duty, produced nett - - - £. 2735 : 10 : 1
Of the second Public Sale - - - 5580 : 5 : 9
Of the third Sale, being the *Quicksilver* whereon Custom was paid, the Drawback deducted produced nett - 31210 : 6 : 2
£. 39526 : 2

Wherefrom are to be deducted the following Charges:

N^o. O.

Account of Monies disbursed, on Account of the Wreck of the Nympha.

1747. To Post-Chaise and Expences to

Birling - - - £. 1 : 7
Capt. *Daubuz*, disbursed at the Warehouse - 7 : 11 : 6
Horses to Seaford - - - 8 :
Ditto - - - 8 :
Paid at the *Star* - - - 10
The Gunsmith - - - 2 : 6

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Dec. 20.	John Tilford, and two more for Salvage - -	1 : 8
	Two more ditto -	1 : 8
	George Upton, for Messages	11
	Mr. Young, washing some of the Linnen - -	6
	Salvage paid 40 Men at Seaford	25
	Gunpowder for the Battery	2 : 5
26.	Horse and Man, to carry the Pow- der in the Night -	6
	A Man to go Express to London	1 : 5
26.	Robinson's Charges -	3 : 3
27.	G. Apled, for Messages -	2 : 6
	Walson 7s. and Palmer 5s. -	12
	Horse to Crowlink -	3
30.	Ditto to carry down some Mus- quets to the Battery -	7
	Horses - -	13
Jan. 4.	More Charges to Robinson	5 : 5
	Man to Crowlink -	3
	Ditto - -	2
	Woman, that recovered a Piece of Linnen before Major Beard	1 : 1
9.	The Boats at Seaford -	56 : 10
13.	Jos. Mosely, for the Hire of his Horse for the Officers	1 : 2
14.	Mr. Glover, what he paid the Sea- ford Boats -	10
16.	John Willard, towards his Bill	15 : 15
17.	Seaford Boats -	48 : 2 : 6
18.	Newell, for Horse-hire	1 : 6
	Mr. Brooker -	10 : 4
	Bill for the Officers at the Tree	4 : 15 : 6
	Mr. Glover for his Disbursements	4 : 6
	The Comptroller of Newhaven, for washing, &c. he paid	2 : 2
23.	A Woman for washing	2 : 6
	John Heatty, for a Man	1 : 19 : 6
	Saunders for Boat-hire	18 : 14

Expences

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25.	Expences, <i>Swain</i> , at the Tree	£.1 : 4
	Boats and 36 Men this last Week	36 : 12
	Expences at <i>Brooker's</i>	- 10 : 4
	<i>Thomas Foster</i> , making a Pair of Tongs	- 9 : 8
	Charges paid <i>John Kerly</i>	- 5
27.	<i>Osborne</i> , for Things for the Stable	2 : 11
	<i>Glover</i> , for what he disbursed	17
	<i>Rabson</i> , for Tongs	- 2 2
	<i>Skinner</i> , for Horse-hire	- 5
Feb. 9.	<i>Dr. Campbell</i> , Disbursements	5 : 3
	Cheese	- 3 : 7
Jan. 29.	Another Pair of Tongs	- 16 : 6
	<i>Holt</i> , for Sticks to put in the Tongs	- 4
	<i>Weller</i> , for Waggon to <i>Crowlink</i>	3 : 3
30.	<i>Foster</i> , another Pair of Tongs	17 : 6
	<i>Peirce</i> , for Waggon	- 11 : 16
	<i>Hellands</i> , ditto	- 6 : 17
31.	<i>Swain</i>	- 2 : 7 : 11
	<i>Seaford</i> Boats	- 18
	Horse-hire	- 7 : 7
	Expences at <i>Brightelmstone</i>	12
	<i>John Kerly</i> , for Disbursements	1
Feb. 2.	<i>Kemp</i> , at the Bear	- 4 : 8 : 8
	Boats at <i>Seaford</i>	- 27
	Carriage to ditto to <i>Newhaven</i>	2 : 5
	<i>Swaine</i>	- 1 : 14 : 9
	Help about the Cable	- 8
	<i>Marolum's</i> Bill, regarding the Wreck, for his Disbursements	4 : 1
	<i>N. Ansel</i> , for Beef for the Battery	16 : 3
	<i>Furlong's</i> Disbursements	3 : 2
	<i>Ann Douglass</i> , for Labour	1 : 11 : 6
	<i>Burringer</i> , for Disbursements for the House	- 7 : 2 : 1
6.	<i>Ja. Weston</i>	- 13
13.	<i>Foster</i> , making another Pair of Tongs	- 18 : 6

Ditto

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	Ditto	-	£.	16 : 9
14.	Boats to <i>Seaford</i>	- -		37 : 16
	<i>Swaine's Bill</i>	- -		1 : 12 : 6
	Carriage to <i>Newhaven</i>			6 : 12
	A Reward for finding the Bottom			2 : 2
	Sundry, for House-hire			6 : 6
	Ditto	-		5 : 5
	According to Promise to the Boats for their Encouragement, for getting 1405 Boxes Quicksilver, given them	-		2 : 2
	<i>John Kerly</i> , for Disbursements			1 : 1
	<i>Cripp's Bill</i> at the <i>Star</i>			24 : 1
	<i>Rosse</i> , the Carpenter, Post-Boxes			17 : 5
	Capt. <i>Brooker's Bill</i> at <i>Newhaven</i>			18 : 17
20.	Mr. <i>Stamper's Bill</i>	-		14 : 14
	Mr. <i>Nichols's Bill</i>	-		1 : 11 : 6
	For Poles	-		4
	Capt. <i>Johnson's Bill</i>	-		11 : 1 : 8
	Capt. <i>Stamper's</i> Disbursements for washing, as <i>per</i> Account at large	-		153 : 14 : 7
27.	Some Fowls	-		2
	<i>Willar</i> , for Waggon	-		2 : 2
28.	Boats at <i>Seaford</i>	-		6 : 6
	People to drink	-		5
	Each Boat a Bottle of Brandy	-		6
	Carriage to <i>Newhaven</i>	-		18
	<i>Swain</i> , at <i>Seaford</i>	-		16
29.	<i>Jenner</i> , the Box-maker	-		6 : 9
	<i>Smith</i> , for a Horse	-		9 : 6
	<i>C. Cooper</i> , towards 2 S. Keggs		15	
	<i>J. Tarrant</i> , for Brandy for the Boats	- -		2 : 2
	<i>G. Upton</i>	-		5 : 6
	Post-Master for 2 Expresses			1 : 10
	Mr. <i>Britt's Bill</i>	-		1 : 3 : 10
	Mr. <i>Willard</i> more his Bill			15 : 1 : 6

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	Mr. Mollineux's Bill	£. 3 : 9
	Mr. Stevens	2 : 2
	The Smith at <i>Birling</i> mending the Tongs	3 : 6 : 6
	Sundry small Memorandums	1 : 0 : 3
	Mr. Edwards's Disbursements and Horse-hire	4 : 18
	Butcher <i>Virgoe's</i> Bill for the House	2 : 4 : 7
March 7.	Mr. Barringer's Bill for the House	6
	Moore, the Cooper, for Keggs	7 : 16
14.	Seaford Boats	14 : 14
	Root, for 2 S. Boxes more	2 : 14
	Turner, the Cooper	19
	Lambert, for Cordage for 2 S. and Bale Goods	5 : 6
18.	Hollands for Waggon	1 : 2
	Pearce, for ditto	3 : 13 : 6
	Mr. Hunter, for brazen Canisters	3 : 6
	Dutton, the Carpenter's Bill, for cutting up the Decks to get the Bales out, and building the House on the Battery	25 : 1
21.	Seaford Boats	9 : 9 : 6
	The Stationer	13
	Capt. Durell, paid for Horse-shoes	3 : 3
	William Durrant, for Waggon	3 : 7
	William Russell, on the Wreck	1 : 12
22.	Edward Davis, for Fish	14
	Thomas Holt, for Poles	2
	Waller, for bringing Wood	4
	For a Coffin for the Doctor, as Mr. Whitfield said	1 : 9
	Mr. Bean, for Lighters, &c.	1 : 5
	Swain's Bill at the Tree	1 : 16
	Waller, for Waggon on the Wreck	3 : 7
	George Sandall, Cooper	7 : 2 : 6
	Collector of the Customs for Har- bour Dues for the 2 Sloops Cargoes	5 : 4 : 6

Farmers

Cases of Insurances.

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23. Farmers at Seaford, viz.

James Saunders	- -	£. 12 : 12
John Bean	- -	4 : 4
William Raje	- -	8 : 8
John Latter	- -	4 : 14 : 6
George Stevens, Thomas Stevens, and Thomas Meggot	- -	6 : 6
Henry Bean	- -	2 : 5
Robert Parmer	- -	16 : 7
John Townsett	- -	2 : 2
Robert Bean	- -	2 : 15
Edward Auger	- -	2 : 2
James Dupree	- -	88 : 6 : 6
William Standford	- -	16 : 5
John Osbourn	- -	5 : 14
James Chambers	- -	28 : 13 : 6
George Allfrey	- -	22 : 18
Thomas Cooper	- -	10 : 18
Thomas Cooper for Brothers	- -	3 : 7
Thomas Swain	- -	2 : 2
John Washer	- -	12 : 11 : 6

1748. Captain Diplock, Captain of the

25. Custom-House Yacht, for Self
and Men at the Warehouse

Henry Merchant, for Teams	5 : 15 : 6
Nicholas Allen, ditto	2 : 2
Medley, Esqr's Man	2 : 2
Mr. Fletcher, Teams as per Bill	43 : 7
Collector at Newhaven, as per Bill	41 : 16
Charles Harrison, Surveyor of the Riding-Officers	102 : 14
Jos. Parmer, for a Team from the Wreck	2 : 2

27. Seaford Boats - - 15 : 15

28. Tickner the Officer, for going to
London with the Waggons 2 : 2

Cases of Insurances.

	A Man to carry Books to <i>Crowlink</i>	6
	A Basket for the Canisters of Nutt	
	Oil - - -	8
	<i>Abraham Edwards</i> , Officer, as per	
	Bill - - -	22 : 6
	<i>Dan. Skinner</i> , ditto - -	16 : 6
	Washing the last Sheeting -	3
	<i>Crisps</i> , for the Farmers, when	
	adjusted - - -	2 : 3 : 4
	<i>Capt. Johnson</i> , what he disbursed	
	at <i>Crowlink</i> - - -	4 : 17 : 2
	My Disbursements with Officers,	
	setting the two Sloops Journey	
	to <i>London</i> and back - - -	4 : 2 : 9
	<i>Smith</i> , the Officer, going to <i>Lon-</i>	
	<i>don</i> with Goods - - -	2 : 2
	<i>Capt. Hadley</i> , a Sloop, fetching the	
	2 S. into the Harbour - - -	12 : 5
	<i>Brooker's</i> Bill for Charges - -	8 : : 6
	<i>Capt. Freebairn's</i> Charges - -	2 : 3
	<i>Brooker</i> for piloting the <i>George</i>	
	<i>Dogger</i> in and out - - -	13 : 6
	<i>John Kerly</i> , sundry Disbursements	2 : 17 : 3
	<i>John Wood</i> , for Skins to the 2 S. -	14
	<i>Charles Cooper's</i> Bill for coopering	
	the Brandy and Wine, when	
	went away with <i>Latten</i> - - -	3 : 2
	<i>Chester</i> , for drying Pepper, Citron,	
	and small Beer - - -	3
	<i>Chester</i> , for small Beer at the Bat-	
	tery, after the Privateer was out	
	of Pay. - - -	1 : 5 : 3
30.	<i>Stamper's</i> Bill, for what he sup-	
	plied the House - - -	2 : 5 : 3
	<i>Virgo</i> , the Butcher, for the House	2 : 15 : 8
	Ditto, for the Battery, after the	
	Privateer was out of Pay - - -	3 : 7 : 4

Ditto,

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	Ditto a Haunch Pork for the House	4 : 2
	Ditto, a Horse and Man twice for the Battery - -	11 : 6
	John Kerby, from the 13th Jan. to the 9th of April -	8 : 18
	Cardin and Jarvis, the Balance of their Account -	9 : 2
	James Husland, from the 25th of Jan. to the 9th of April, 77 Days, at 2s. -	7 : 14
April 1.	Charles Douglas, from the 2d of March to the 9th of April, 38 Days, at 1s. 6d. -	2 : 17
	Two Horses from Pool, Jan. 13 to the 9th of April, 89 Days, a 1s. each -	8 : 18
2.	Doctor Manning, for old Jones a- bout the Cloths -	1 : 1
	Horse-hire to Crowlink -	6
	Samuel Young, for fetching the 5 Guns and 20 Tons Iron, and put- ting on board old Sweetbland	1 : 17 : 9
3.	Weller, for Carriage -	2 : 4
	Peirce -	8
	Mr. Thomas Friend's Bill	21 : 17
	Seaford Boats -	21 : 5
	Mr. Harrison, Tho. Newington, Offi- cers, going to London	2 : 2
	Swain, at the Tree -	1 : 8
	John Willward, for the Officers lodging in the House	65 : 3
	Rolfe, for more Boxes -	6
	Mills, at Birling, for lodging the People that worked -	6
	Richard Mills, for Men	
	Price at Birling -	11 : 6
	Holland's Carriage -	18
	Mr. Brooker, £. 1 : 15 and 4s. 6d.	1 : 19 : 6
	The Sadler -	7 : 6

The

Cases of Insurances.

	The Postmaster for Expresses, &c.	2 : 13 : 6
	Hollands for Waggon	2 : 8
	Barringer for Work	13 : 6
	Crips for Oats	6 : 2
	A. Edwards for Horsehire	2 : 14 : 6
	John Edwards, ditto	14 : 10
	Mr. Barringer for the House	8 : 16 : 6
	Charges at Grimstead	17
	Post-chaise at Godstone	18 : 6
	at the Parrot	13 : 6
	Officers I sent for, and detained to assist on the Salvage :	
	Capt. Johnson who I appointed Foreman to manage at Crowlink from Dec. 10 to April 6, at	
	10 Sh. per Day	59 : 10
	Lieut. Fullerton, from Dec. 2 to	
	March 8, 96 Days, a 5 Sh.	24
	Lieut. Furlong, ditto	24
	Capt. Macolum, ditto	24
	Capt. Durel, and Expences to and from Pool	25
	Capt. Freebairn, from March 12 to April 6, 25 Days, a 5 Sh. after the Privateer was out of	
	Pay	6 : 5
	Six Men at the Battery since ditto	17 : 11 : 4
	Scarding and Jarvis, for Cellar, Boards, Lighter, Washing, &c.	20
	Mr. Edwards more	1 : 1
	A Man at Grimstead, James Batche- lor, by Order of N. paid to	
	Thomas Swain	3 : 6 : 4
	A Horse that was killed	10
	John Kerby and Capt. Freebairn, small Disbursements	1 : 2 : 6
28.	My Expences in London, sitting with the Waggoners, maintain- ing Horses, paid Wisher	9 : 14 : 6

John

Cases of Insurances.

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John Kerby	-	-	1 : 18
Ditto, he disbursed on the Wreck			17 : 3
John Whitfield for Disbursement			
paid by him to the Salvors	308 :	6 : 8	
Headly, Boat hire	-	-	11 : 2
Capt. Stamper, attending on the			
Wreck, and recovering Goods			
from the Country	-	-	42
Mr. Belchier's Expences in Horse-			
hire, two Servants, and main-			
taining 150 Soldiers 8 Days	68 :	8	
Robinson's Attendance	-	-	10 : 10
Sam. Belchier's Attendance			21
Two Sloops coming from Pool to			
Newhaven, and taking Wreck-			
Goods for London	-	-	138 : 7
the George Digger from December			
3 to March 3, 3 $\frac{1}{2}$ Months, to			
guard the Privateers, and con-			
voy the Sloops to the Downs	550		
Edwards, more for Boats &c. on			
the Wreck	-	-	11 : 2
Sundry Officers attending the			
Waggoners in London	10 :	10	
Myself acting and disposing for			
the Managers, 150 Days, agreed			
at £. 5 per Diem	-	-	750
Hoskins's Waggon, per Bill			28
Clark's ditto	-	-	26 : 1 : 6
Cole's ditto	-	-	22 : 9 : 5
Marchant and Vinal to Mr.			
Hoskins	-	-	15 : 13 : 11
Hoskins, for Wickersen, Batchelor,			
Martin and Comp.			31 : 15 : 3
Ditto, for Wilbar	-	-	14 : 14
Ditto, for Pearce	-	-	4 : 2
Mr. Davis	-	-	69
Mr. Hoskins	-	-	22 : 11 : 6
Durant	-	-	10

CASE
XVII.

Nº. P.

Nº. Q.

Portuguese

Cases of Insurances.

<i>Portuguese and Italian Sailors in</i>	
<i>Confideration of the Salvage</i>	
<i>and Wages</i>	- 277 : 5
<i>John d'Acosta, Interpreter</i>	10 : 5
<i>Fifty English Sailors, hired at</i>	
<i>Lisbon, for bringing the Nym-</i>	
<i>pha</i>	- - 432 : 16 : 6
<i>William Knight going twice to the</i>	
<i>Wreck</i>	- - 10 : 10
<i>George Taylor, for Salvage of</i>	
<i>Goods</i>	- - 2 : 13
<i>Nicholas Furlong coming round</i>	
<i>with the Sloop</i>	- 3 : 13 : 6
<i>Gaf. Beard, Custom-house Offi-</i>	
<i>cer for Attending</i>	- 3 : 3
<i>Sundry Sailors travelling Charges</i>	
<i>from Pcol</i>	- - 3 : 6
<i>Two more Sailors Wages paid</i>	13 : 10
<i>Two Packers, for going down to</i>	
<i>Lewes to sort, dry and pack the</i>	
<i>Goods</i>	- - 108 : 18
<i>Insurance from Lewes to London</i>	
<i>on £. 9100</i>	- 271 : 18 : 6
<i>Charles Roger's Account of Char-</i>	
<i>ges in London</i>	- 1231 : 8 : 9
<i>The Managers for directing the</i>	
<i>Salvage, Mr. Belchier's and Mr.</i>	
<i>Talbot's personal going, and</i>	
<i>making the proper Dispositions,</i>	
<i>and for our Commission on the</i>	
<i>Sale of the Goods, valued at</i>	
<i>£. 44057 : 2 : 2 d. a 5 per</i>	
<i>Cent.</i>	- - 2202 : 17 : 1
<i>£. 8596 : 9 : 11</i>	

It was then judged reasonable, that the following Articles should be moderated: CASE
XVII.

£. 550	For an armed Vessel to guard the Wreck, N ^o . P. 3 $\frac{1}{2}$ Months.	
750	For Mr. <i>Tito's</i> Direction on Behalf of the Agents, 150 Days, at £. 5 per Day.	Q.
277 : 5	Paid for Wages to the <i>Portuguese</i> and <i>Ita- lian</i> Sailors.	R.
432 : 16 : 6	For Wages to 50 <i>English</i> Sailors.	S.
2202 : 17 : 1	The Commission of the Agents upon the Amount of the publick Sale being to- gether £. 44057 : 7 : 2 at 5 per Cent.	T.

£. 4212 : 18 : 7

Upon the Whole it was agreed, that from these £. 8596 : 9 : 11
should be an Abatement of £. 1988 : 11, there remain for
Charges - - - £. 6607 : 18 : 11

So that the Loss was adjusted in the following Manner :

The Valuation	-	-	£. 150000
Goods saved sold for	£. 39526 : 2		
Deduct for Charges above	6607 : 18 : 1		
			32918 : 3 : 11
The whole Loss is			£. 117081 : 16 : 1

Which Sum being to be paid upon £. 150000 at 98 per Cent. N^o. U.
makes 76 $\frac{1}{2}$ per Cent. Loss. And thus this grand Affair was ad-
justed by the L. A. C^o. ; whereto all the other Insurers in *Lon-
don, Bristol* and *Exeter* acquiesced, without engaging in any Suit
at Law : Very greatly redounding to the Honour of the Insu-
rers in *England*.

Shewing how and upon what Value the Buyers of the $\frac{3}{4}$ of the Quicksilver in the Nympha mentioned in the foregoing Case, ought to contribute to the Salvage.

IN the preceeding Case it is set forth, that the Agent who went to *Lisbon*, was obliged to consent to allow the conditional Sale of $\frac{3}{4}$ of the Quicksilver to stand good; he agreed that all the Quicksilver should remain on board, and proceed in the *Nympha* to *London*, and as the whole Cargo was insured in *England*, and a joint Valuation had been made of it in all the Policies, he signed a Paper, by which he made himself answerable to the Buyers of the Quicksilver, for the Sum of 48000m *Rees* Insurance a $4\frac{1}{2}$ per Cent. on the Terms as expressed in their Policies in *England*.

- N^o. A. Now as most of the Quicksilver was saved and being worth at *London* a much higher Price, then insured and paid for it at *Lisbon*, and the Buyers Insurance making only a Part of the whole Cargo and the Ship insured and valued together, and in all Policies expressed alike, it seems to be doubtful whether under the Conditions agreed to at *Lisbon* by the Agent for the Privateer, the Buyers of the Quicksilver were to be considered in any other
- N^o. B. Light, than as claiming under an Assignment for the 48000 *Mill Rees* to be taken from the whole Insurance in general? Some Lawyers were of Opinion, that the $\frac{3}{4}$ Parts of the Quick-
- N^o. C. silver saved should not be delivered to the Assigns of the Buyers who much alarmed thereat, demanded the same by Law. As the settling of the Insurance in general depended on the publick
- N^o. D. Sale of all that was saved, a Person interveened as Mediator, and it was agreed by both Parties, that a publick Sale should be made of all the Quicksilver, and their Difference left to Arbitration. The publick Sale being made, Arbitrators were fixed
- N^o. E. upon; Mr. B. B. for the Buyers of the Quicksilver, Mr. N. M. for the Concerneds in the Prize, Mr. P. T. as umpire, who did not think themselves obliged to enter into any Discussion about the

the Validity of that Bargain, since the Parties had admitted thereof at *Lisbon*: But the Matters to be weighed and considered were CASE XVIII.

First, The Account of Salvage Charges, delivered by the Agents, whether overcharged, or not? N^o. F.

Secondly, On what Value a Repartition of those Charges was to be made: and how much the Agents as their Insurers for 48000 *Mill Rees* ought to bear: and what the Buyers themselves ought to bear? N^o. G.

As to the *first* Point. The Arbitrators were of Opinion, that no more than 4 *per C.* in the Whole ought to be allowed on the Sale of what was saved out of the *Nympha* instead of £. 750, for £. 5 a Day to Mr. *Tito* and £. 2202, for the Agents Commission at 5 *per Cent.* which 4 *per Cent.* make N^o. H.

That by allowing the Seamen £. 709, as passed in the Account, the Agents had been too liberal to them, for no more than their Share of £. 33000 net saved should have been made them good, and as £. 33000 saved on £. 150000 the Valuation, makes 22 *per Cent.* on £. 709, it ought to be but £. 156

Further for extraordinary Aid of these Seamen the Arbitrators allowed - 164
320

Thus from the Account as delivered by the Agents amounting to - £. 8596 : 19
£. 750, £. 2202 : 17 and } is 3661 : 17
£. 709 being deducted }

Remains to be added to the above Sum - 4935 : 2

So in the Whole allowed for the Charges of Salvage and Commission - 7017 : 2

Which is £. 409 : 2 more than had been admitted by the Insurers: For from £. 8596 : 19 they deducted £. 1988 : 11, and there remained £. 6607 : 18, whereunto being added £. 409 : 2 makes £. 7017 : 2, as above.

CASE XVIII. As to the *second* Head. It was very evident, that had not the Quicksilver been saved, the Buyers could not have been benefited by the Price it sold at in *London*: they would have received for the 48000 *Mill Rees* assigned them in the Assurance at 5s. 6d. £. 13200 less 2 per Cent. - £. 12936

Now the $\frac{3}{4}$ saved produced in *London*, the Duties deducted - - - 23407 : 15

From whence being deducted the above Sum of £. 12936 it is very plain these Buyers ought to bear a Proportion of the Charges of Salvage on £. 10571 : 15 insured.

To prove and illustrate this Point, *N. M.* produced a parallel Case adjusted and settled with the *L. A. C.* and the *R. E. C.* (being the next following) and divers others from *Lisbon* and other Parts, inserted in this Work.

Nº. K. Some little Difference between the Parties with Regard to the Reduction of the Weight was then discussed. That is to say, on how much the Buyers ought to pay at the Price bought at *Lisbon*. Two different Accounts were produced as follows.

1467 Chests at 153 lb. neat render in *London* 224451 lb.
and as lb. 112 in *London* make lb. 100 at *Lisbon*, it
would make of *Lisbon* lb. 220443.

$\frac{3}{4}$ whereof being lb. 165332, at 300 <i>Reis</i>	
per lb. is - - -	<i>Reis</i> 49599m600
Insurance for 48000 <i>Millreis</i> , at $4\frac{1}{2}$ per Cent.	2016m000
Duties at <i>Lisbon</i> at 200 <i>Reis</i> per lb. at	
4 per Cent. - - -	1322m650
	52938m256

Which at 5s. 6d. make the Demand of the Seller to be
£. 14558 : 1

The

The other Account.

1467 Chests at $151\frac{1}{2}$ lb. in *London* make lb. 222250 $\frac{1}{2}$, and
as 102 $\frac{1}{2}$ in *London* make 100 at *Lisbon*, the Whole would
produce lb. 216830.

$\frac{3}{4}$ whereof make lb. 162622, at 300 Reis	Reis 48786m600
Insurance as above	- 2016m000
Duties at 200 Reis at 4 per Cent.	- 1300m976
	52103m576

At 5s. 6d. the Buyers Account amount to £. 14328 : 19.

The Arbitrators taking the Medium of both Sums, viz.

£. 14558 : 1 and £. 14328 : 19 awarded
that the Buyers should pay - £. 14443

Nº. L.

As in *Lisbon* they had paid 44720 Millreis
on Account, at 5s. 6d. there must be
deducted - - - 12298

Remain due	£. 2145
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The Account therefore between the Parties was thus stated
and settled :

The

Cases of Insurances.

CASE
XVIII.

The Buyers of the Quicksilver.

D ^s .		C ^r .	
To ballance due as above	£. 2145	By $\frac{1}{4}$ of the Sale of all the Quicksilver, the Whole being £. 35522: 5: 2	
To 104 Lots of Quick- silver bought for their Account out of the publick Sale	26355: 3: 5	Deduct for Duties 4311: 19	
		£. 31210: 6: 2	
To Salvage on £. 23407: 14: 8, at $17\frac{1}{4}$ per Cent.	4154: 17: 6	Of which $\frac{3}{4}$ amounts to - £. 23407: 14: 8	
	£. 32655: : 11	By Lot Money paid 1092	
The Arbitrators awar- ded to repay to the Buyers in London for Balance -	826: 8: 7	Insurance of 48000 <i>Millreis</i> at 5s 6d. to pay 98 per C. is £. 12936 $17\frac{1}{4}$ per Cent. Salvage Char- ges to be made good thereon 2296: 2: 10	
		Moreover De- ficiency on Quicksilver not saved at $5\frac{1}{8}$ per Cent. on the said £. 12936 in- fured 685: 12	
		2981: 14: 10	
		By Cash paid by the Buyers to the Agents in London 6000	
	£. 33481: 9: 6	£. 33481: 9: 6	

To

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CASE
XVIII.
N^o. M.

To explain and illustrate the above Account, it will be proper to make out, in what Manner the Computation was made so as to fix the $5\frac{3}{4}$ per Cent. for Deficiency of Quickfilver.

If all the 1467 Chests had arrived safe in London, they would have weighed at			
153 lb. each	-	-	lb. 224451
Deduct 5 lb. a Chest as was done at the publick Sale	-	-	7335
			lb. 217116
Tret 4 per Cent.	-	-	8350 $\frac{1}{2}$
		Net	lb. 208765 $\frac{1}{2}$

Now the Whole that was sold at the publick Sales was			
-	-	-	lb. 197701

So there was wanting - lb. 11064 $\frac{1}{2}$
which being lost on lb. 208765 $\frac{1}{2}$ lb. comes out at $5\frac{3}{4}$
on every £. 100.

The whole Amount of the Sale of the Goods saved, deducting the Duties, was - £. 39526 : 2
The Arbitrators allowed as above for Charges of Salvage £. 7017, which make - $17\frac{3}{4}$ per Cent.
Thus the Sellers or Agents ought to pay to the Buyers as agreeing to insure to them 48000 Millreis, or £. 12936, as explained above

For Charges of Salvage	-	-	$17\frac{3}{4}$ per Cent.
And for Want, or Deficiency, or Quickfilver lost	-	-	$5\frac{3}{4}$
		In all	$23\frac{3}{4}$ per Cent.

And those Sellers or Agents ought to receive from the Buyers the Salvage Charges on the Value of £. 23407 : 14 : 8, at $17\frac{3}{4}$ per Cent. being $\frac{3}{4}$ of the Produce of the Sale of the Quickfilver.

It

CASE
XVIII.
N^o. N.

It may farther be observed, that the Buyers of the Quicksilver in Strictness ought to have been charged with a proportional Part of £. 125, which was the Freight agreed on. For that Sum *N. M.* demanded £. 96:3:6. (See Case xxix.) Further to have been thoroughly exact, the £. 685:12 allowed for lost Quicksilver, should have been deducted from £. 12936, the Sum insured to the Buyers, and only $17\frac{3}{4}$ per Cent. for Charges of Salvage, demanded on £. 12250:8.—But as 8 Chests more of Quicksilver were saved not comprehended in the above Account, and there was still a Chance that something more might be found, which Chance and the above Chests being given up the Sellers, *N. M.* desisted from the above small Demand, and the Buyers of the Quicksilver, without Law-suit or Vexation, recovered for $\frac{3}{4}$ of the Quicksilver sold - - - £. 23407:15

For $17\frac{3}{4}$ per Cent. Charges of Salvage
5 $\frac{3}{16}$ per Cent. for Deficiency on
£. 12936 insured -

2981:14:10

£. 26389:9:10

Deducting on £. 23407:15 at $17\frac{3}{4}$ per
Cent. for Charges of Salvage -

4157:17:6

£. 22231:12:4

at *Lisbon* it cost them -

14443

Remains clear Profit

£. 7788:12:4

N^o. O.

Now though it be evident that the Buyers of the Quicksilver made so great a Profit, yet the Concerneds in the Prize were almost equally benefited by their Agent's having assigned to those Buyers the Insurance of £. 12936; for hereby they paid on £. 12936, only $22\frac{1}{16}$ per Ct. for Loss and Salvage; whereas the Insurers paid them $76\frac{1}{2}$ per Ct. (See Case xvii. N^o. U.) Had no such Assignment been made, then there only could have been a Return of Premium of 4 per Cent. on that Sum of £. 12936 to the Agents. Still the Insurers in *London* were neither prejudiced by this Assignment, since the whole Produce of the Quicksilver was made good to them at the Price it sold at *London*, and thus paid so much less Loss to the Insured, as it yielded Profit to the Buyers.

N^o. P.

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CASE
XVIII.

Buyers. We will endeavour to illustrate this Matter and prove it: Suppose no Assignment of Insurance had been made on the $\frac{3}{4}$ Part of the Quicksilver bought at Lisbon, moreover that by Litigation the Valuation of the Prize and Cargo at £.150000 could have been set aside. Then let us state the Case to see whether Ship and Cargo were worth the Sum insured. And first we must observe that £.105800 insured at 98 per Cent. produce

£.103684

Deduct $\frac{1}{4}$ of the Quicksilver, as bought in Lisbon, on which the Premium to be returned

L.14443

Less 2016 Mill. Reins Premium

a $\frac{1}{2}$ per Cent.

554

13889

Remain

L.89795

which is the Sum the Insurers would have been answerable for.

Now as to the Worth of the Prize:

Nº. Q.

The Spaniards at Lisbon having offered 450000 Dollars for her, at 6 Dollars for a Pound Sterling, is

75000

For Duty and Charges at Lisbon, at least 10 per Cent. must be added, is

7500

These two Sums make L.82500 to insure,

which at $4\frac{1}{2}$ per Cent. Premium to receive 98

per Cent. there could have been L.88235 insured

3979

$\frac{3}{4}$ Part of the Quicksilver being lb. 52194.

which was known to be worth in London 3 s.

per lb. there could have been insured

7286

Makes in all

L.93756

Deduct for 6 Shares, on which no Insurance was to be made, or $\frac{1}{10}$ Part of the Whole

2344

L.91412

*Cases of Insurances.**L.* 8315 is the Produce of the Goods saved.7286 $\frac{1}{4}$ Part of the Quicksilver insured for that Sum.

To be deducted

L. 156013089*L.* 2769 for Charges of Salvage at $17\frac{1}{4}$ per cent.
320 for $\frac{1}{10}$ of *L.* 12832, the Net of the
Goods and Quicksilver.*L.* 12512 deducted from *£.* 91412.

So the Loss on *L.* 103684, is - 78900
 and Premium to be returned on *L.* 12272,
 being the Difference from *L.* 103684 in-
 sured to *L.* 91412, the above stated
 Worth of the Price at 4 per Cent. - 490

Which make together - *L.* 79390

Which on *L.* 103684 to pay 98 per Cent. } makes $75\frac{40}{100}$ per
 or on *L.* 105800 to pay 100 per Cent. } Cent. in the Whole.
 instead of $76\frac{1}{2}$ per Cent. at which it was adjusted.

N^o. R.

And should the Insurers have gone to Law, the Captors, by In-
 voices found on board the Prize, could easily have proved that
 the Price offered by the Spaniards was in reality much less than
 the Goods were bought for, at the Place where they were fa-
 bricated: so that those Invoices would have sufficiently con-
 vinced any Jury that a greater Sum than the *£.* 91412 above-
 mentioned, and might perhaps have allowed for the Value of
 the Prize 1 or 2 per Cent. more than what was awarded to re-
 cover from the Insurers. But, with great Submission to the
 Gentlemen of the Law, we imagine it would have been no
 easy Task to have made them comprehend the whole Connexion
 of this Matter: Though to Merchants, who may be at the
 Pains to examine those Accounts, it will plainly and fully ap-
 pear that no Party has been prejudiced thereby. And so it often
 happens that for Want of carefully examining and weighing
 our own Concerns, Disputes at Law arise, which when cleared
 up are found not to have been worth disputing.

C A S E.

C A S E XIX.

Shewing in what Manner the Owners of Goods contributed to the Charges of Salvage on the Amount of their Value at Cape Francois, or at the Place where they were landed, more than the Sum insured on them.

ON the 26th of June, 1744, Messrs. S---s in London, made an Insurance with the London Assurance Comp. for Account of R---d V---e at Bourdeaux, of L. 1000, viz.

£. 600 upon $\frac{1}{4}$ Part of the Ship *l'Orphee*, which was valued at the Sum insured.

400 upon $\frac{1}{4}$ Part of the Cargo, being bound from Bourdeaux to Cape Francois.

Not far distant from the last-mentioned Place this Ship was chased a-shore by an *English* Privateer, and several of the Goods plundered; the first Cost whereof, according to the Account delivered, amounted to 12477 Livres, 16 Sols, 11d. and was included in the whole Cargo, which said Messrs. S---s valued at Liv. 31675: 12: 9d. consequently V---s $\frac{1}{4}$ Part Liv. 7918: 18: 3d. a 33 d.

Premium a 15 per Cent.

l. 362: 19: 1
54: 9

l. 417: 8: 1

N^o. A.

and $\frac{1}{4}$ of what was plundered 3119 Liv. 9: 3

a 32 $\frac{1}{2}$ d.

Premium a 15 per Cent.

l. 140: 16: 2

21: 2: 4

l. 161: 18: 6

Commission of the Assurance $\frac{1}{2}$ per Cent.

16: 2

Loss

l. 162: 14: 8

H h 2

the

CASE XIX. the Ship valued at l. 2400 Sterl.

at $32\frac{1}{2}$ d.

Liv. 53169 : 4 : 6

being damaged she was sold at Cape

Francois for Liv. 16510

deduct for Difference in

the Money 25 per Cent. 4127 : 10

12382 : 10

Liv. 40786 : 14 : 6

whereof the $\frac{1}{4}$ Part

Liv. 10196 : 13 : 7

at d. $32\frac{1}{2}$, the Loss is

- £. 460 : 3 : 9

Paid in all for Charges of Salvage upon
the Ship and Cargo, as by the Ac-

count

Liv. 17302 : 16 : 4

whereof they deducted $\frac{1}{4}$

2162 : 17

Liv. 15140

and for Difference in the

Money

- 3785

Liv. 11355

is for $\frac{1}{4}$ Liv. 2838 : 15 a

d $32\frac{1}{2}$ Loss

- L. 128 : 12 : 9

L. 751 : 1 : 2

- N^o. B. Which Sum Messrs. S---s demanded from the said Company ;
to which it was objected : That granting the Amount of the
N. C. first Cost of the Goods plundered to be right at Liv. 12477 :
16 : 11, yet it appeared from the Certificate of the Goods saved
and sold at Cape *Francois*, that they did produce 55620 Livres,
and consequently much more than the whole Cargo had cost :
And although they did not pretend to any Share in that Profit,
yet the Company were of Opinion that the Proprietors of those
Goods ought to contribute towards the Charges of Salvage for
so much as they had rendered more than the Sum insured on
them.

The Company therefore made up the Account in the fol-
lowing Manner :

Goods

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CASE XIX.

N^o. D.

Goods saved.	fold for.	cost.
49 Casks with Bacon	Liv. 2017	Liv. 781 : 1 : 6
131 red Wine	23798 : 13 : 8	6130 : 11 : 7
5 filled up		
28 white Wine	1948 : 2 : 9 $\frac{1}{2}$	480 : 3
1 $\frac{1}{2}$ filled up		
85 pickled Meat	4745	3407 : 16
13 Potts Butter	441	180 : 14 : 4
2 Casks Nails	445	171
25 Bundles Pipe-staves	480	137 : 8
3 Casks Tallow	230	82 : 15
2 Ditto Pitch	600	50
3 Ditto Vinegar	49	15 : 6 : 6
321 Ditto Flour	17271	6855 : 6 : 3
6 Ditto Oatmeal	971	417 : 15 : 6
3 Ditto Brandy	60	27 : 5 : 8
24 Deals	100	107 : 5
7 Casks Leaden Bullets	465	243 : 7

the Ship

Liv. 55620 Liv. 19089 : 2 : 4

Liv. 72130

For Premium of Liv. 23138, a 15 $\frac{1}{2}$ per Cent.
to pay 98 per Cent.

3586

for Difference in the Money 25 per Cent.

22675 : 2 : 4

7525

The Cost at Cape Francois

Liv. 30200

Upon the abovementioned Produce at the Sale
of 72130 Liv. were to be divided the Char-
ges of Salvage, being
and to deduct $\frac{1}{2}$ instead of $\frac{1}{3}$, as by the Ac-
count Messrs. S---s had formed

Liv. 17302

4325

Liv. 12977

Which

CASE XIX. Which borne by the following Particulars,
make

N^o. E. For Liv. 30200, the Cost of the Goods with
the Premium Liv. 5433
16510, the Sale of the Ship 2971
25420, Profit upon the Goods 4573

Liv. 72130 Liv. 12977

And the Loss wherewith the Insurers were chargeable amount-
ed to as follows, viz.

The whole Cargo cost -- Liv. 31675 : 12 : 9
Premium of 38394 Livres a $15\frac{1}{2}$
per Cent. -- 5951 3

Liv. 37626 : 13

The whole Loss -- Liv. 12477 : 17
Premium of 15124 Liv. at
 $15\frac{1}{2}$ per Cent. -- 2344 : 3
Charges of Salvage Liv. 5433
Deduct $\frac{1}{2}$ -- 1358

4075

So that the Loss to be paid on the
Cargo amounted to 50 per Cent.
being -- -- Liv. 18897

Upon the Ship valued at £. 2400 Ster.
a d. $32\frac{1}{2}$ -- -- Liv. 53169 : 4

Which was sold for -- Liv. 16510
Deduct for Charges of Salvage 2971

Liv. 13539

And

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CASE XIX.

And for Difference in the Money,

25 per Cent.

3385

Liv. 10154

Loss to be paid on the Ship, 80

$\frac{2}{3}$ per Cent.

43015:4

Liv. 53169:4

At which Rate the *London Assurance Comp.*

had to pay

For £. 600 upon the Ship, at 80 $\frac{2}{3}$ per

Cent.

£. 485: 8: 9

400 upon Goods, at 50 $\frac{1}{2}$ per Cent.

200: 16

Nº. F.

£. 1000

£. 686: 4: 9

Messrs. S—s finding no Objection to make to this Account, received the Payment accordingly, and the *Royal Exchange Comp.* afterwards adjusted the Sum, which they had underwrote, to Mr. T—s T—s in the same Manner. When regard is had to Equity, the most intricate Affairs are easily decided.

CASE

Shewing how the Charges for Repairs were demanded, as well from the Insurers upon the Ship, as from the Insurers on the Freight, and for how much thereof they were esteemed liable in this Instance.

THE Ship *Seymour* laying at Anchor the 20th. of October, 1744, in the Harbour at *Jamaica*, full loaden with Sugar, was ready to depart for *Bristol*, having all her Stores on board: But a violent Hurricane arose, which drove her from her Anchors, and she run a-shore. She had 7 Feet Water in her, and all her Masts were cut away, to prevent her over-setting. By which Precaution the greatest Part was still preserved; but she was obliged to be unloaded, and Part of the Sugar was washed away.

N^o. A. Although the Ship appeared like a mere Wreck, yet upon narrow Inspection it was judged still practicable to repair her. Her Freight amounted to a considerable Sum, and it was worth while to be at the Expence it would require; which indeed ought to be very well weighed and considered, the Expences at *Jamaica* being much higher than in *Europe*, and they might even have exceeded the full Value of the Ship. She was repaired accordingly, and within 6 Months put in a Condition to prosecute her Voyage for *Bristol*. In the room of the Sugar that was washed out she took in others, and so again made up a full Loading as she had before. She arrived safely at *Bristol*, and delivered her Cargo.

N^o. B. The whole Charges of the Repairs, the Maintenance of the Labourers and Ship's Company at *Jamaica*, amounted in the whole to $l. 1891 : 11 : 1d.$ a 140 per Cent. $l. 1351 : 2 : 2$

There was received from the Freighters, and made good to the Ship, according to a separate Calculation at *Bristol*, of what was charged in the general Average for what was cut away

$234 : 10 : 2$
 $l. 1116 : 12$

And

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CASE XX.

And when the Ship came to be examined again at *Bristol*, it was found, that in order to put her completely into the same good Condition as she was before the Hurricane, there would still be required to be laid out upon her

263 : 11 : 11

£.1380 : 3 : 11

And one of the Owners of the Ship having made Assurance on his $\frac{1}{2}$ Part, without making any Valuation in the Policies,

at *Bristol* £.600 upon the Rigging and Materials of the Ship to pay 85 per Cent.

at *London* £.400 upon the Freight, to pay 85 per Cent.

for which he demanded $\frac{1}{2}$ of the abovementioned £.1380:3:11d. Charges, being

£.460:1:4

For the Premium of £.400, which he had insured thereupon, with Consent of the Insurers, at 21 per Cent. and Policy

84 : 4 : 6

£.544 : 5 : 10

But the Insurers in *London* alledged, that nothing was lost of the Freight, and that the Repairs of the Ship concerned only the Assurers upon the Hull of the same, the Affair was therefore left to Reference; and as the Arbitrators could not agree among themselves about the Manner of making up this Account, the following Question was proposed for Information Sake:

N^o. C.

If it be taken for granted

First, That the Freight received at *Bristol* was

£.1695: 9

Deducting for Mens Wages and Provisions

448: 4:2

Neat £.1246:16:2

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I i

Secondly,

CASE XX.

N^o. D.

Secondly, That the Value of the Ship and fitting it out at Jamaica amounted together to - £. 1980

Then the Query is: What Part of the Charges, or how much *per Cent.* is to be paid

N^o. E.

First, By the Assurers on the Ship?

Secondly, By the Assurers on the Freight?

The Answer given was as follows:

N^o. F.

From the Papers that have been produced, relating to the Ship *Seymour*, it seems to be evident enough, that the principal Motive for laying out so much Money for Repairs, after she was drove a-shore by the Hurricane, and reduced almost to a Wreck, was in order to save the considerable Freight of the Goods the Ship had on board, or to make the same up again another Way, which would have been absolutely lost, if the Ship had been abandoned or sold as unfit to proceed on her Voyage. As therefore both the Insurers on the Ship and the Insurers on the Freight reap the Advantage of these Repairs, they ought in Justice jointly to bear the Expence thereof, and to contribute their Shares towards the Salvage. The latter, in particular, have great Reason to be well satisfied with the Resolution taken of repairing the Ship.

N^o. G.

When a Person makes Assurance upon the Freight of a Ship, it is customary, and is no more than reasonable, that he then make the less Assurance on the Ship itself; for although the Assurance on the Hull is in its Nature different from the Assurance on the Freight, yet whenever an Account is made up, to prove or demand a Loss upon such Assurance, or to make a Repartition of the Salvage Charges, the same must be examined first in general, and afterwards looked over and compared together separately; for it often happens that the Owners include the fitting-out of the Ship, when they make Assurance on the Hull: And as the Fitting-out, Victualling, Mens Wages, Premium of Assurance upon the Ship, as well as Wear, Tear, and Diminution of the Materials by Time or Use, must all be produced by the Freight, it is to be observed that the same ought not to be charged

charged in both Parts, nor to make the Assurance or receive a CASE XX.
Loss double, which may probably have been the Case sometimes.

It has also frequently happened, when an Insurance has not
been made to the full, and a Dispute afterwards arose about the
Distribution of the Charges of Salvage, that it has been neglect-
ed to make the Assured himself contribute thereunto for that
Part, which he had insured too little on the Value of the Ship
and the Freight.

N^o. H.

And as Mr. *J---n G---n* had in this Case made the Assurance
upon $\frac{1}{2}$ of the Freight £. 400 to pay 85 per Cent. £. 340
upon $\frac{1}{2}$ of the Ship £. 600, to pay 85 per Cent. 510

N^o. I.

£. 850

And having not made any Valuation in the Policy, the Question
is, Whether by the above £. 850 he has insured too little or too
much?

N^o. K.

The Answer is :

The Freight at *Brisol* has produced £. 1694 : : 9
From which the Mens Wages are only
to be deducted, and instead of the
£. 448 : 4 : 2d. charged hereabove
for the same, and for victualling, add
for Mens Wages (supposing they were
3 Months on their Return home) 200

Remains of the Freight, as a Risk
for the Owner of the Ship £. 1495 : : 9
whereof the above $\frac{1}{2}$ would be £. 498 : 6 : 11

And in order to make up the Interest
of the Assured to £. 850, there re-
mains to set the Value of the Ship
at £. 1054 : 19 : 3d. if she had per-
formed her Voyage without meet-
ing with this Misfortune, $\frac{1}{2}$ where-
of is

351 : 13 : 1
£. 850

112

In

CASE XX.

N^o. L.

In which Case the Ship would have been worth rather less than more after she had finished her Voyage, consequently the Value thereof does not seem to be set at too low a Rate; The Question is not at present about settling an entire Loss, but about the Repartition of the Charges of Salvage, and it is evident, that every Assurer is chargeable with so much the less, in Proportion as the Sum insured is larger, more especially we will allow on these *l.* 850 as indisputable.

$\frac{1}{3}$ of *l.* 1351 : 2 : 2 *d.* extraordinary Charges
Deduct 234 : 10 : 2 from the general Average

1116 : 12

l. 372 : 4

In order to insure these Charges to the full, it should have been done for 581 $\frac{36}{84}$ *l.* which at 21 *per Cent.* is *l.* 122 : 2 : 6 *d.* instead whereof it is now only demanded on *l.* 400, a 21 *per Cent.*

84 : 4 : 6

But as to the *l.* 263 : 11 : 11 *d.* for the further Repairs of the Ship it seems but reasonable, the same should be dropped, since in the Sum of *l.* 1351 : 2 : 2 there are comprehended many Articles of new Things, provided in the Room of old ones. The Insurers therefore ought to bear of the *l.* 850

456 : 8 : 6

N^o. M.

However as there is a Difference between the Insurers upon the Ship and the Insurers on the Freight with Respect to their Objects, since the first, as it seems, are alone to bear the Expence of new Materials and Implements provided in the Place of what was lost, and which remain with the Ship, whereby the Ship was rendered fit for further Use, Service and Voyages, with which View this Insurance was made at that Time; but the latter are not subject to such Disbursements, but only liable to be called upon for the Expences incurred for the Preservation of the Freight.

Therefore

Therefore one of the two following Directions ought, according to our Opinion, in this Case to be chosen. CASE XX.
N^o. N.

First, (a) To charge the Insurers on the Ship separately with the Prime Cost of the Materials that were provided new, and remain with the Ship; but (b) all Expences for Victualling, Workmanship, &c. to be born in common by the Insurers on the Ship and the Freight. Upon which Footing the sundry Articles in the Account for Masts, Sails, Cables, Rigging, bought new, amount together to

	£. 513 : 9 : 2
Commission at <i>Jamaica</i> , a 5 per Cent.	25 : 13 : 3

539 : 2 : 5

a 140 per Cent.

385 : 1 : 9

M. G--n's $\frac{1}{3}$

128 : 3 : 3

Premium a 21 £. per 64

42 : 3 : 1

£. 170 : 10 : 4

From £. 456 : 8 : 6

Deduct 170 : 10 : 4

Upon £. 1000 285 : 18 : 2 is

upon 600

171 : 10 : 11

For the Insurers on the Ship, a 57 per C.

342 : 1 : 3

Upon £. 400 for the Insurers on the

Freight, a 28 $\frac{1}{2}$ per Cent.

114 : 7 : 3

£. 456 : 8 : 6

Or,

Secondly, (a) The Things bought new, the Workmanship and the Victualling may be valued at the Rate, as if the Ship had been repaired at *Bristol* or *London*, and then charge the whole Amount to the Insurers on the Ship; but (b) let the Insurers on the Freight bear the Difference of as much as the Things cost more at *Jamaica*. Which last Direction is, without Doubt, the most exact and regular.

N^o. O.

CASE

C A S E XXI.

Shewing how the Loss upon a Parcel of Hemp, which was refused on Delivery by the Buyer, was calculated and demanded at a losing Market according to Prime Cost, and the Insurer on the contrary insisted, that the same was not regular.

IN September Anno 1747. H. R. had made Assurance with the London Assurance Company for £. 2500 upon Goods by the Ship the *Diamond*, Capt. — Young, from St. Petersburg to Plymouth, a $6\frac{1}{2}$ per Cent. Premium, to return 2 per Cent. in Case the Ship departed from the Sound with Convoy.

The Ship arrived at Plymouth in January Anno 1747, and of the Cargo of Hemp, which was sold upon Delivery to the King's Dock at £. 28 : 10, where upon Delivery 481 : 1 : 21 lb. were refused as unserviceable. H. R. was of Opinion, there was no Foundation for refusing so much of it; however seven Months elapsed before he gave over all Hopes of a further Delivery, and put the refused Hemp up to publick Sale.

N^o. A; The Market Price was fell above 20 per Cent. H. R. endeavoured to prove, that all the Damage was occasioned by Sea-Water in the Voyage, and required of the said Company to make good to him, according to the following Account, upon the Cost:

1653 Pood 10 lb. damaged, a 11 Rub. $34\frac{1}{2}$	Rub. 1875 : 12
Charges a 2 Rub. per Bosq.	330 : 65

Rub. 2205 : 77

a 4 s. 6 d.	£. 496 : 5 : 11
Sound Duty	6 : 17 : 1

Premium of Assurance of £. 530, a $4\frac{1}{2}$ per Cent.	23 : 17
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Custom

Cases of Insurances.

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CASE XXI.

Custom of 24 Tons 1 : 3 ,	
a 52 s. -	£. 63 : 13 : 4
Allowance - -	20 : 3 : 2
	43 : 10 : 2
Freight of 24 Tons 13 : 3 : 7 lb. a £. 4 : 8	107 : 12
Fetching a-shore and landing -	11 : 4
	£. 689 : 7 : 4
For the neat Proceed of Tons 24 : 1 : 1 : 21	
sold at Plymouth - - -	337 : 19
	£. 351 : 8 : 9

Against which the Company alledged, that it was well known, that there generally was some Refuse among a whole Cargo of Hemp, even when the Sea had not washed over the Ship, therefore an exact Enquiry was absolutely necessary, to know, whether this Refuse was not partly bad already before it was put on board, as likewise, whether at the Time of unloading there appeared any plain Marks of the Sea-Water on the Bundles, before they were opened and mixed together. Besides that the Company was no more liable to bear the Loss upon Goods, when they come to a losing Market, than they esteem themselves entitled to any Part of the Profit, when they are sold to Advantage. Therefore the Regulation of the Damage could not be settled any other Way, than by calculating the Difference of the Prices between the damaged and the sound, and if then at the Price of the sound, the Goods come to more than what they cost, and are assured for, that the Proprietor ought to be looked upon as his own Insurer for so much as they amount to more or the Profit, and to bear the Loss in Proportion; But if the Cargo at the Market Price does not produce so much as it cost, then such Difference ought to be divided upon the Prime Cost with Addition of the Premium; because, in Case of a total Loss, the Assured would have received his Payment at that Rate, or had the Premium returned him for so much as might have been shipped less than was insured.

H. R.

CASE XXI.

H. R. was of Opinion, that by keeping and deferring the Sale of refused Hemp so long, he had acted for the Benefit of the Company, because, during that whole Interval of Time, he had not neglected to solicit the King's Officers, to receive some more thereof, and then he should have had no Demand at all upon the Company for that Part, which he had persuaded them to take. But they maintained, that, notwithstanding this, they had nothing to do with the Conjunction, or the Rise and Fall of the Goods, which by keeping of them in this Instance turned out to his, the Proprietor's, Loss, but, if, for Example, Hemp had risen to 40s. and the damaged could in Proportion have been sold for 30s. being more than it cost, or it was agreed to be delivered at, in that Case, *H. R.* would have been intitled to have demanded 25 *per Cent.* of the Company, because the Hemp was grown actually so much the worse in Quality.

No. C.

They therefore made up the Account, as follows:

481 : 1 : 21 lb. damaged were sold in July	
for - - - - -	l. 337 : 19
If the same had not been damaged, would	
have been worth, at the Price, as it was	
the 23 July - - - - -	553 : 14
	l. 215 : 15
Paid less for Custom - - - - -	20 : 3
	l. 195 : 12

Which, because at the Price of the 23d the Value of the Cargo was less than it cost, are to be divided upon the Cost of

the Hemp -	Rub. 9322 : 21
the Iron -	1289 : 37
	Rub. 10611 : 58

a 4½s.

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CASE XXI.

$a\ 4\frac{1}{2}\ s.$ - - - $l.\ 2387 : 11$
 Premium of $l.\ 98$
 $6 : 10$

 $l.\ 91 : 10$ to insure
 $l.\ 100$ makes for $l.\ 2387 : 11$
 $l.\ 2609 : 6$ a $6\frac{1}{2}$ per Cent. - $169 : 12$

 $l.\ 2557 : 3$

 Upon $l.\ 2557 : 3$ to pay - $l.\ 195 : 12$
 how much for $l.\ 98$? A. - $7 : 9 : 9$
 And to receive of the *London Assurance Com-*
pany for $l.\ 2500$, a $l.\ 7 : 9 : 9$ - $l.\ 187 : 3 : 9$

Hereupon the Affured consented to accept $l.\ 200$ for his De- N°. D.
 mand of $l.\ 351 : 8 : 9\ d.$ and thus this Affair was adjusted.

C A S E XXII.

CASE
XXII.

*Shewing how a particular Average upon Goods was
 calculated at Lisbon, according to the Price there,
 and how it was settled with the Insurers in
 London.*

IN the Year 1748 an Average was to be settled with some
 Private Insurers at *London* upon Goods shipped at *Ham-*
burgh, on board the Ship *Orient*, bound for *Lisbon*, which was
 stranded on the Coast of *Portugal* near *Paniche*.

The Account Sales were of the following Contents:

Lisbon, the 23 July 1748.

ACCOUNT Sales of 12 Chests, containing 1500 Pieces *Bre-*
tagnes, shipped by Mess. *P. H. St--n* and *S--n* on board
 the Ship *Orient*, which was stranded at *Paniche*, and this Parcel
 saved, being sold

N°. A.

VOL. I.

K k

490 Pieces

490 Pieces without Average to *V--o*, *D--o*
and *C°*, for ready Money, a 1290 Rees *Rees 632m100*
1010 Pieces damaged, have rendered at a
publick Sale, at the Rate it has been
settled, by the Account of Mess. *J--n*
and *D--ll*, *G--r*, who assisted and acted
at the Sale as Attorneys for the Insurers
in *Holland* *861m276*

86Im376

Rees I493m476

Freight, 12 <i>Crusados</i> , a 480	
<i>Rees</i> with 10 <i>per Cent.</i> or-	
ordinary Average in Dispute R.	
Paid to the abovementioned	
Administrators for Salvage	
and other Charges of deli-	
vering into the Custom-house	
490 Pieces, that came free	
from Average upon the Prime	
Cost, amounting to <i>Rees</i>	
525m680. a 10 <i>per Cent.</i>	52m568
Duty of 350 $\frac{1}{2}$ Pieces	
in 490 Ps. valued	
at 433 <i>Rees</i> and 25	
<i>per Cent.</i>	<i>Rees</i> 37m941
Deduct $\frac{1}{3}$ Part being for	
Goods saved	7m588
	30m353
Ticket 240 <i>Rees</i> , Measurer in	
the Custom-house 200 <i>Rees</i>	4m040
To affix the Seals 100 <i>Rees</i> ,	
Writers 11 <i>Rees</i> , Binders	
10 <i>Rees</i>	6m200
Warehouse Rent 200 <i>Rees per Chest</i>	m800
Brokerage $\frac{1}{4}$ <i>per Cent.</i> with the	
Certificate	7m947

Paid

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Paid to the aforesaid Administra-
tors to defray the Charges of
Salvage, and other Expences of
entring at the Custom-house
and the publick Sale, $16\frac{3}{4}$ per
Cent. upon the gross Produce

144m280

Consulage of 1580m, a 1. per Cent.

15m800

For the Poor, a 2 per Mille

2m987

Commission, a 3 per Cent.

44m804

309m096

Neat Rees 1184m380

J---y and B---n.

J---N G---R, *Consul General of Their High Mightinesses
the States General of the United Netherlands in Portugal
and the Dominions thereof, &c.*

N°. B.

BE it known, where and to whomsoever it may concern,
that in Pursuance of the full Power granted unto Us J---n
and D---l G---r, We have proceeded to and begun the pu-
blick Sale of the Goods saved out of the Ship *l'Orient, Nicol.
Nummels*, bound from *Hamburg* to this Port, which was
stranded, on the 13 *March* 1748 and the following Days, of
which the Proportion appertaining to the 1010 Pieces *Bretagnes*
aforesaid after deducting $16\frac{3}{4}$ per Cent. for Duties, Salvage,
Charges, &c. at the Rate of their Prime Cost is Rees 717m096,
as appears here above; Likewise, that We have received of
Mess. J---y and B---n Rees 52m568 for the 490 Pieces deli-
vered to them, being the Amount of the Charges upon said
Goods, a 10 per Cent. according to the Invoice thereof; And
that this may appear, wheresoever required, I have given these
Presents under my Hand and Seal. In *Lisbon*, the 23 *July*
1748.

J---N G---R.

K k 2

Lisbon,

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Lisbon, the 23 July 1748.

N^o. C. ACCOUNT Sales *pro forma*, of what the aforesaid 1500 Pieces *Bretagnes* would have produced, if they had not been damaged.

1500 Pieces, a 1290 Rees - Rees 1935m000

CHARGES.

Freight, *Crusados* 12, a 480 Rees
and 10 *per C.* with unloading Rees 6m636

Duty of 1071 Pieces, in 1500 Ps.
a 483 Rees, a 25 *per Cent.* 115m935

Ticket 240 Rees, Measurer in the
Custom-house, a 200 Rees 2m640

To affix the Seals, a 11 Rees, and
100 Rees *per Chest*, Binding a
10 Rees *per Dozen* - 19m950

Sundry Charges in the Custom-
house - - - 4m944

Bringing home - - - 1m300

Warehouse Rent - - - 2m400

Brokerage, a $\frac{1}{2}$ *per Cent.* - 9m675

For the Poor, a 2 *per Mille* - 3m870

Commission, a 3 *per Cent.* - 58m050

225m400

Rees 1709m600

J---y and B---n.

N^o. D. To which was annexed a Certificate from S---n da S---a,
a Broker, that the 490 Pieces *Bretagnes* had been sold at
1290 Rees.

Against these Accounts no Objections were made, but it was
in Regard to the 1.400 insured upon 12 Chests, containing
1500

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1500 Pieces *Bretagnes*, allowed, that in Case they had arrived found, the Neat of them at *Lisbon* would have been

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but now they were damaged

Rees 1709m600

1184m380

The Loss therefore is

Rees 525m220

Upon 1709m600 Rees, Value at *Lisbon* 525m220 Rees

a $5\frac{1}{2}$ s.

a $5\frac{1}{2}$ s.

l. 470 : 3

l. 30 : 2

How much to pay for l. 98 of 100?

l. 144 : 9

Adjusted by the Brokers *G--n* and *G--n*, and there was paid N^o. E. accordingly

For l. 200 assured by *J--n T--r* l. 60 : 4

100 - *B--n le H--k* 30 : 2

100 - *S--ll P--t* 30 : 2

l. 400 to pay 98 is 392 l. 120 : 8

The Prime Cost of which 1500 Pieces

Bretagnes was with the Premium

of Assurance Mks. 5270 : 3 s.

a 34 s. - l. 413 : 6 : 8

Cost not insured - l. 21 : 6 : 8

Profit - 56 : 16 : 4

So the Proprietors bear of these

Salvage Charges and Loss a 30

per Cent. for 98 l. of l. 78 : 3 23 : 18

l. 144 : 6

R E M A R K S.

From the above Attestation of the Dutch Consul it appears, N^o. E. that some of the damaged Goods, which were saved, were put up to publick Sale, and that the Sum, they produced, was divided among the Proprietors of each Species in Proportion to the

CASE XXII. the Prime Cost of them, and was done by Reason of the Difference in the Prices, for so much as the *Bretagnes* of one cost more than those of another.

Nº. G. Supposing there had been mixed together the above 1010 Pieces, which cost in the

		Gross Mks. 3 : 8	Mks. 3535
with other {	1010	-	4040
	1010	-	3030
			Mks. 10605

And that all the 3030 Pieces together had produced 2584m128 Rees in the Gross at the Sale in *Lisbon*, then the Proportion

For the first 3535 Mks. would have been	Rees 861m376
the 2d 4040	- 984m430
the 3d 3030	- 738m322

Rees 2584m128

Nº. H. And in so far Equity has been near enough observed; but in Regard to the Duties and Charges of unloading, some Prejudice seems to have been done the Owners of the finer *Bretagnes*, by making the coarse and fine Sorts pay equally alike, for this ought not to have been divided upon the gross Produce at the Sale, but upon the Number of Pieces, since the Valuation for the Duties was the same of every Piece.

For instead of reckoning, as seems to have been done, the Duties upon 3030 Pieces for 2167 Pieces, a 433 Rees and 25 per Cent. deducting $\frac{1}{3}$ Part - Rees 187m662

and dividing the same upon Rees 2584m128 makes upon

the first,	Rees 861m376	-	Rees 62m554
second,	984m430	-	71m490
third,	738m322	-	51m618

Which should have been only

Rees 62m554 }
62m554 }
62m554 }

Befides

Besides the Charges of Salvage for the Goods delivered should more properly have been calculated upon the Value of them at *Lisbon*, and not on their prime Cost. But as here the whole consisted of Linnen, upon which there is but little Difference in the Profit, and it could not be pretended from the Proprietors, to put them all promiscuously up at Public Sale for that Reason, nor is strict Justice always sufficiently regarded in the Appraisements of Brokers; and as the Representatives of the Proprietors and Assurers in *Holland* did all together consent to have the Repartition made in that Manner, therefore no reasonable Insurers in *London* could well desire it otherwise neither. It is not to be presumed, if any Goods had been found among the Rest at *Lisbon*, that were not worth so much there as they cost, that the Proprietors of them would have agreed to contribute for more than the actual Value of them at that Place.

Upon the same Footing several other Averages have been adjusted in *London*, by calculating the Loss according to the Difference between the Prices, for which the damaged and the sound Goods were sold, and to make the Proprietor contribute as his own Assurer for so much of the Cost as he had not insured to the full, nor the Profit.

An Instance of an Average with the *London Assurance Comp.* upon 2 Packs containing 1008 Pieces *Bretagnes* sent from *Hamburgh* to *Lisbon* by the Ship *Anne Elizabeth*.

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XXII.

Nº. I.

Nº. K.

Nº. L.

Nº. M.

Nº. N.

Nº. O.

Nº. P.

CASE
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The Parcel did produce,

613 Pieces found at 1380 Rees, for ready Money
 395 damaged by Sea-Water, at 700 Rees } which, if they had all been found,
 } would have produced 1380 Rees.

Rees 1391m040

Rees 1122m440

CHARGE S.

For Freight Cruzados 13 a 480 Rees

and 10 per Cent. - Rees 7m344

Duties of 613 ps. - 47m089

Ditto 395 - 15m263

For to seale 1008 ps. - 12m408

Sundry Charges - 3m506

Bringing home - m960

Warehoufe Rent - 1m600

Brokerage, a $\frac{1}{4}$ per Cent. - 5m612

The Poor, a 2 per Mill. - 2m245

Commiffion, a 3 per Cent. - 33m673

134m020

156m266

Neat Rees 988m420

Neat Rees 1234m774

988m420

Loss Rees 246m354

Upon

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Upon Rees 1234m774. is lost Rees 246m354
 $a\ 5\frac{1}{2}$ $a\ 5\frac{1}{2}$
 $\underline{\hspace{1cm}}$ $\underline{\hspace{1cm}}$
 $\pounds.339:12:2d.$ $\pounds.67:14:11d.$
 how much upon 98 $\pounds.$
 makes 19 $\pounds.11s.$
 is for $\pounds.290$ insured a 98 $\pounds.284:4$ $\pounds.56:14$
 55 being the Cost
 and Profit not
 insured $55:8:2$ $11:11$
 $\underline{\hspace{1cm}}$ $\underline{\hspace{1cm}}$
 $339:12:2$ $\pounds.67:14:11$

N^o. Q.

N^o. R.

But on the Part of the Insurers, special Caution should be used, not to trust in Calculations of this Kind to the Reports of Brokers alone; but to insist on a Demonstration of the Difference in the real and actual Sales.

C A S E XXIII.

CASE
XXIII.

A Policy of Assurance upon the Life of Cattle.

WE the here-underwritten Assurers promise and oblige ourselves to assure, and do hereby assure you G—d R—e and S—n, or, on Behalf of any other Person, to say each of us the Sum underneath respectively mentioned. And this Assurance is made upon 62 Heads of Oxen, which are now at Grass in the County of Oldenberg, upon the Estate of General Brilow, next to Ovelgonnen, as it is called, and belonging to the above, and with Consent of us Assurers, he the Assured values the said Oxen at 14 Rix-Dollars N. $\frac{2}{3}$ per Head with the Premium, wherewith we are content, whether they cost or are worth more or less; nor shall the Assured be obliged to produce any further Proof or Account besides this Policy in case of any Damage or Loss. We also consent, that the Assured may make his Assurance to the full, without being obliged to run 10 per Cent. or any Risk whatever, notwithstanding the Ordinances of Assurances may say otherwise: For we freely of our own Accord

N^o. A:

CASE
XXIII.

cord take upon ourselves all Damages or Misfortunes, that can be imagined or not, to befall, or that may befall, these Oxen; putting ourselves in all Respects for every Thing in the Place of the Assured, to keep him free and harmless from all Difficulties whatsoever, without any Exception, notwithstanding any good or bad Advices, beginning the Risk from this Day, and to continue to the 15th of *October* of this current Year 1720; promising, in case of Damage, to pay to you, or the Bearer hereof, all the Loss you shall suffer in Proportion to the Sum underwrote, by each of us hereunder, as well the first of us as the last; and that within 2 Months next ensuing, after due Notice and Intimation has been given us, of what Loss or Damage has happened in regard to this Assurance. And we acknowledge to have been paid the Premium of this Assurance by the Hands of *Abraham van Herkeele*, in full, after the Rate of 10 per Cent. in N. 3, after the Usage and Custom of the *Exchange* at *Antwerp*; to which we submit ourselves, in so far as it is not contrary hereunto; binding for this Purpose all our Goods, and renouncing, upon good Faith, and as under Oath, all Exceptions and Cavils to the contrary. Thus done in *Hamburg*, in the Year 1720.

R E M A R K.

N^o. B. In this Policy it would have been highly necessary to mention more particularly, that the Assurers did take upon themselves the Danger and Risk of all Distempers and Sickneses, Robbery, Force and all other Accidents, whether to be imagined or not, that might happen to these Oxen.

Writings for settling the Loss.

N^o. C. We the Burgomaster and Senate of the City of *Bremen*, make known and attest hereby publickly, that *Arend Korthan*, our Citizen and Merchant here, personally appeared before us, acquainting us, that in the Year last past, 1720, he had made an Assurance at *Hamburg*, by *G---d R---* and *S---n* there, upon 62 Heads Oxen, which Oxen, conformable to the Tenor of the Policy of Assurance made out for the same on the 27th *June* of said Year, were then

then still all sound and well: nor had any of them died at that Time, as he assured on Oath: And he further humbly requested to be interrogated upon Oath to the five following Points, and graciously to grant him an Attestation, *viz.*

CASE
XXIII.

INTERROGAT.

ANSWERS.

N^o. D.

- | | |
|--|---|
| <p>I. When were the Oxen, upon which the Assurance was made, put to Grass?</p> <p>II. How many Head were in all at Grass for <i>Arend Kortban</i>?</p> <p>III. Had <i>Arend Kortban</i> no Oxen at Grass in any other Meadows on the same Estate?</p> <p>IV. How long did the Oxen continue well, and when came the Mortality amongst them?</p> <p>V. What was the Occasion of it, and were the Meadows good, or any Ways suspected?</p> | <p>I. In the Month of <i>May</i>, the usual and customary Time for putting Cattle to Grass.</p> <p>II. The 62 Head upon which the Assurance was made at <i>Hamburgb</i>, besides 2 Oxen belonging to another Friend: And there were at Grass besides 3 Oxen for other People, making together 67 Head.</p> <p>III. In no other Meadows than the two which have been named, <i>viz.</i> the <i>Mill Meadow</i>, and the small <i>Stone-Horse Meadow</i>.</p> <p>IV. In the Month of <i>July</i>.</p> <p>V. The Reason no Man can know, but it was the Hand of God; nor were the Meadows suspicious in my Opinion, since it is not to be presumed that the Meadows could be had in Suspicion, for it was never yet to be discovered, that the Cause of the Distemper proceeded from the Ground.</p> |
|--|---|

Which reasonable Request we could not refuse the Petitioner, he having actually confirmed the Truth of the above-written Deposition with his corporal Oath, before us, as God should help him. We, Burgomaster and Se-

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XXIII.

nate aforesaid, attest and certify therefore, that his Deposition made before us upon Oath, by these our Letters Patents, is corroborated with our Knowledge under our City Privy Seal. Signed *Bremen*, the 19th of *July* 1721.

N^o. E. The Court of Affizes appointed by his Royal Majesty of *Denmark, Norway, &c. &c.* for the Town and District of *Fa-dinger Land*, doth certify and make known, that upon Receipt of a requisitorial Order from the King's Honourable Regency at *Oldenburg*, dated the 19th *Sept.* 1720, to this Court, the two following Persons being appointed by *M. Arend Kortban* of *Bremen*, viz. *J. J. Wilhelms* and *J. Oddings*, having beforehand been seriously exhorted to avoid Perjury, did, on the 30th *October*, 1720, before the Court, make the following Declaration upon Oath, in relation to some Oxen, which the said *Arend Kortban* had at *Grass* in this Country.

Form of the O A T H.

I *J. J. Wilhelms*, and I *J. Oddings*, Herdsmen to *Arend Kortban*, take our corporal Oath to God: And first, I *J. J. Wilhelms* for myself in particular, that I this Year had for my Share the Care of 37 Head of Oxen from said *Arend Kortban*, on the little *Stone-Horse Meadow*; but 22 of them died, whereof 18 were buried with their Skins, and the other 4 without, having been flead first; and that *Arend Kortban* told me there was one Ox among the 37, which belonged to a Person on the other Side of the *Wefer*, but did not mention his Name to me, which Ox was among the Number of the Dead, and that two Oxen, which are both alive, were for some Friends. And next I *J. Oddings* swear a corporal Oath to God, that I for my particular did attend on 30 Head of Oxen for *Arend Kortban* in the *Mill Meadow*, but that 23 of them died, of which 19 were buried with their Skins, and the other 4 without, having been flead first; and that the said *Kortban* told me himself there were 2 Oxen among them that belonged to some other People, which he did not name to me, and the said two Oxen are likewise both dead. All which is herewith confirmed by the Court, and a judicial Attestation thereof granted to the said *Arend Kortban*, Merchant of *Bremen*. In Witness, &c.

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CASE
XXIII.
N^o. F.

Calculation of the Loss upon 62 Head of Oxen, valued in the Policy at

14 Rix-Dollars *per* Head with Premium, N. $\frac{2}{3}$ Mks. 2604

The Loss thereupon, *viz.*

18 Oxen remained alive
42 Oxen died, a 14 Rix-Dollars - Mks. 1764
2 Oxen killed, a 14 Rix-Dollars Mks. 84 :
have produced as *per* Account 54 : 13

For the Attestation upon Oath - 29 : 3
For travelling Expences to procure the Attestation - 10 : 13
6 : 10

Mks. 1810 : 10

Which Mks. 1810 : 10s. N. $\frac{2}{3}$, divided upon the Capital of Mks. 2604, make $69\frac{1}{3}$ *per* Cent. and the Assurers did pay 67 *per* Cent.

Account of 2 Oxen brought from Ovelgonne hither, with Consent of the Assurers, and killed here, have yielded, *viz.*

For 498 lb. Beef, a 2 gr. 4 schw. *per* lb. Rix Drs. 19 : 26 $\frac{1}{2}$
20 Tallow, a 6 gr. 1 : 48
The 2 Hides together - 3 : 48

Deduct Charges - Rix Drs. 24 : 50 $\frac{1}{2}$
For Excise for the two Oxen Rix Drs. 2 : 7
Salt, Vinegar, and Pepper to pre-serve the Meat - 1 : 12
bringing the Oxen hither 3
6 : 19

Rix Drs. 18 : 31 $\frac{1}{2}$

AREND KORTHAN.

CASE

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XXIV.

C A S E XXIV.

Shewing how a general and particular Average upon a Cargo of Hides and Lead by the Ship Industry, Captain William Henry, from Liverpool for Leghorn, was settled at the last-mentioned Place.

N^o. A:Liverpool, the 21st Nov. 1750.

INVOICE of 456 Pieces Lead shipped for Leghorn, on board of the Ship *Industry*, Capt. *William Henry*, to the Consignment of Messrs. *L—* and *T—*, there, being for Account and Risk as hereunder specified, viz.

N ^o . 38	N ^o . 1 to 19	76 Pieces
39	1 22	88 ditto
40	1 23	92 ditto
41	1 20	80 ditto
57	1 6	24 ditto
58	1 11	44 ditto
59	1 13	52 ditto

456 Pieces, weighing together 35 Ton 5 C. 1 qr. 18 lb. a 12 l. per Ton, is £.423:4:9

C H A R G E S.

Custom, Town Dues and Cocquet £.46:18:1½

Expences in *Wales* on buying the

Lead - - - 15

Freight from *Wales* - - - 5:5

Bills of Lading 9 d. Cartage 8 d.

per Ton - - - 1:4:1

54:2:2½

£.477:6:11½

Transf-

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Transport from the other Side
Commission 2 per Cent.

£. 477 : 6 : 11 $\frac{1}{2}$
9 : 11 : 11 $\frac{1}{2}$

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£. 486 : 18 : 11

S. E.

Liverpool, the 21st Nov. 1750.

A---r and B---n H---d.

$\frac{1}{2}$ Mr. C. L---s	-	£. 243 : 9 : 5 $\frac{1}{2}$
$\frac{1}{4}$ Mr. D. C---n	-	121 : 14 : 8 $\frac{3}{4}$
$\frac{1}{4}$ A---r and B---n H---d	-	121 : 14 : 8 $\frac{3}{4}$

Liverpool, the 29th Nov. 1750.

Invoice of 1300 Hides shipped for Leghorn on board of the *Industry*, Capt. William Henry, to the Consignment of Messrs. P---e, L---s and T---s there, for Account and Risk as hereunder mentioned, viz.

Nº. B.

1000 Hides weighing 30329 lb.
300 Ditto - 9032

39361 lb. a 8 $\frac{1}{2}$ d.

per lb. £. 1394 : : 8 $\frac{1}{2}$

C H A R G E S.

Cocquet, Custom, and Fees to the
Officers -

£. 27 : 16 : 6 $\frac{1}{2}$

Paid for examining, collecting,
and sending away 300 Hides 3

Carriage of 300 Hides 3

Ropes, Packing, Cartage, and

Porterage - 4 : 6 : 8

Port Charges - 3

Warehouse Rent - 1 : 15

Commission 2 per Cent. 27 : 17 : 9

70 : 15 : 11 $\frac{1}{2}$

S. E.

£. 1464 : 16 : 8

A---r and B---n H---d.

$\frac{1}{2}$ Mr.

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Mr. C. L---	-	£.732 : 8 : 4
Mr. C---n	-	366 : 4 : 2
A---r and B---n H---d	-	366 : 4 : 2

N^o. C. Account Sales of 834 Hides in 167 Bundles and 354 Pieces Lead, received by the Consignation of Messrs. A---r and B---n H---d at *Liverpool*, by the Ship *Industry*, Capt. *William Henry*, for Account as under specified, and sold as follows, viz.

21 May, 150 Hides damaged, neat	
5640 lb. a 18 $\frac{1}{2}$ S. per lb.	
to the best Bidder, Ps. 887 : 2 : 6	
544 Ditto ditto 20847 a 15 $\frac{1}{4}$ S.	2692 : 14 : 9
130 Ditto ditto 5290 a 15 $\frac{1}{4}$	699 : 16 : 5
834 Hides	31777 lb. Ps. 4279 : 13 : 8

Licence for the public Sale 1 $\frac{1}{2}$

per Cent. - ps. 53 : 9 : 10

To the Appraisers of the

Damage - 13 : 18 : 3

67 : 8 : 1

Ps. 4212 : 5 : 7

Freight £. 100 Sterl. a d. 50 Ps. 480

 $\frac{3}{4}$ Post-Charges - 18 : 14

Primage, &c. - 40

Ps. 538 : 14

Duty and Ticket - 17 : 8 : 1

Bringing ashore and into the Warehouse - 20 : 17

Warehouse Rent and Stowage 20 : 17

People to spread the Hides out 6

Sen-

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CASE
XXIV.

Sentence of the Judge, Writings
of the Solicitors here, and at
Pisa, and of the Consul, which
we have charged in the general

Average	-	-	46
Brokerage	-	-	-
Commiffion, 2 per Cent.			84 : 4 : 10
			734 : : 11
			Dol. 3478 : 4 : 8

354 Pieces Lead, viz.

16 June	160 Pieces, lb. 38100 neat	a Ducats 21 $\frac{1}{2}$ per Mil.	
		and 3 per Cent. to	
		<i>Rangoni</i>	Dol. 927 : : 2
17 Ditto	30 ditto 7280 a 21 $\frac{1}{2}$ to		
		<i>J. Melo</i>	- 177 : 2 : 7
25 Ditto	40 ditto 9690 a 21 $\frac{1}{2}$		
		to ditto at 2 per	
		Cent.	238 : 14 : 2
30 Ditto	20 ditto 4700 a 21 $\frac{1}{2}$ and		
		3 per Cent. to <i>Jean</i>	
		<i>Clanetti</i>	- 115 : 13 : 9
7 July	104 ditto 24900, a 21 $\frac{1}{2}$ and		
		3 per Cent. to <i>Ra-</i>	
		<i>gueneau</i>	- 595 : 5 : 5

354 Ps. lb. 84670 neat Dol. 2053 : 16 : 1

Freight charged upon the

Hides	-	Ps.	: :
Duty and Ticket	50 : 15 : 8		
To bringing a-shore			
and into the Ware-			
house	-	24 : 15 : 7	
Warehouse-Rent and			
ftowing	-	17 : 14	
Brokerage $\frac{1}{2}$ per Cent.	10 : 5 : 4		

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Com-

Commiffion 2 per Cent. 41 : 1 : 6

144 : 12 : 1

1909 : 4

Dol. 5387 : 8 : 8

Legborn, the 13 July, 1750.

S. E.

P—re L—ois and S—n.

Protest of Capt. William Henry.

N°. D.

THE Captain declares that he failed from *Liverpool* on the 21st of *December*, 1749, Old Stile, and so continued with variable Weather till the 2d of *January* of the same Stile, when he met with a Storm, which prevented him from proceeding on his Voyage, and therefore he went that same Day into the Port of *Falmouth*, where he was forced to continue at Anchor till the 8th of that Month, when he came out from *Falmouth* on his intended Voyage; but on the 11th of the said Month was again overtaken by a violent Storm from S.S.W. with a great Sea, and having shipped a great deal of Water, he was obliged to pump, the Leather at the same Time, by sucking in of the Water, became of an extraordinary Weight, and the Storm continued, wherefore he resolved to fling some of the Leather, and 100 Pieces of Lead, which lay upon it in the Hatchway, overboard for common Security, whereby the Ship was lightened, and he proceeded on his Voyage till the 28th of *January*, when finding himself three Degrees from the *Lizard*, he met with another violent Storm from S.S.E. and very great Sea, which put him under the Necessity to throw 500 Hides more overboard, in order to save the Ship, and preserve his own and the Mens Lives; and as the Wind being contrary, caused the Ship continually to fall a-stern, he put into the Harbour of *Plymouth* on the 6th of *February*, in order to have the Ship repaired, where he remained till the 6th of *March*, when he got under Sail to proceed on his Voyage; but when he came in Sight of *Maban*, found that he was short of Water, so put in there; and having provided himself with what he had Occasion for, failed again, and

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and on the 14 *April* old Stile arrived here at *Leghorn*, where he made this present Protest, &c. &c.

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CASE
XXIV.

Witnesses

NICHOLAS WALLIS, Mate, 40 Years of Age.

WILLIAM CAMUEL, Seaman, 35 Years of Age.

Sentence of the Judges of *Pisa*.

WE, CAVRI QUINTILIO GALEOTTI and NICCOLO GAMBI, Nobles of *Florence*, and Consuls of Marine for the City of *Pisa*, as likewise lawful Judges in Civil, Maritime and Mercantile as well as intermixt Causes, decree in the Cause between *William Henry*, Master of the Ship *Industry*, and *P--re L--s* and *S--n*, Receivers of the Cargo of said Ship, which Cause is now depending before Us and Our Court, that the said Captain must be cleared and absolved, and We do accordingly clear and absolve him with his Ship and People from all Loss and Damage upon the Cargo of Hides and Lead, which he brought to *Leghorn*, and delivered there, since such Loss and Damage was occasioned by the Necessity of flinging Part of the Hides and Lead over-board for the Preservation of the Ship, the Lives of the People and of the Cargo, and to prevent the imminent Danger the Ship was in of being lost in the Voyage from *Liverpool* to *Leghorn*, without any Fault or Defect of the Ship, or Mismanagement or bad Conduct of the Master and Mariners, leaving such Damage and Loss, &c. upon the Hides and Lead to those whom it may concern, and We will, that the said *P--re L--s* and *S--s*, as Receivers of the Cargo, do pay to the Captain the full Freight as well for the Hides and Lead, that have been delivered, as for what is wanting. Further We condemn the said *P--re L--s* and *S--s*, that in the Average for Repairs, and making good the Hides and Lead flung over-board, as likewise of the Expences of the Taxation, they shall bear the Proportion for the Value of the Hides and Lead, and the Captain for half his Ship and one third Part of the Freight.

N. E.

CASE
XXIV.*Attestation of the Broker concerning the publick Sale of
the Hides.*

N°. F.

I the underwritten publick Auctioneer testify to all, whom it may concern, that Mess. P--r L--s and S--s had the following Parcels of Hides sold at publick Sale, which were delivered on the 13 May 1750. in Manner following:

To Mess. B--e Brothers, 150 Hides damaged
with 1 lb. per Hide, Tare and 2 per Cent.
customary Tare, have produced only
lb. 5640 neat, a $18\frac{7}{8}$ Dol. 887 : 2 : 6

To ditto - 130 Hides more damaged,
lb. 5290 neat, a $15\frac{7}{8}$ 699 : 16 : 5

To G--o M--s 544 Hides still more damaged,
the Weight whereof was agreed to be
settled upon an equal Footing with that
of the 150 Hides make lb. 20847 neat,
a $15\frac{1}{2}$ 2692 : 14 : 9

Dol. 4279 : 13 : 8

Deduct the usual Expences
of publick Sale, a $1\frac{1}{4}$ per
Cent. Dol. 53 : 9 : 10

To separate the Hides into
different Assortments 13 : 18 : 3 67 : 8 : 1

Dol. 4212 : 5 : 7

Which Hides came from *Leverpool* by the Ship *Industry*, Capt. *William Henry*, to said Mess. P--r L--s and S--s, and I paid to them the same Day the Produce of Four Thousand two hundred twelve *Dollars* five *Sols* and seven *Deniers*.

GIO. BATT. TAGLIAMENTE.

Taxation

Taxation of the Damage.

CASE
XXIV.

N^o. G.

Report of the two Appraisers, appointed to value the Damage and Loss upon the Cargo of the Ship Industry, from Liverpool, which Cargo was to have consisted of 1300 Hides in 260 Bundles, marked as in the Margent, but whereof only 834 Hides were found, very much damaged by Sea-Water, which were divided into the three following Parcels, in order to sell them immediately in Publick to prevent Increase of the Damage, &c. &c.

- 30 Bundles qt. 150 Hides, but little damaged by Sea-Water, which, if they were to be reckoned according to the Invoice at 36 lb. Leghorn Weight per Hide, would make 5400 lb. and at the current Price of 21 s. if they had been delivered in good Condition Dol. 945, but now damaged as they were, have produced lb. 5640, a 18 $\frac{1}{2}$ per lb. only Dol. 887 : 19 : 2, is Loss Dol. 57 : : 10
- 26 Bundles qt. 130 Hides, more damaged by Sea-Water, which, according to the above Calculation, if they had been in good Condition, would have rendered lb. 4680 of this Weight and at the current Price of 21 s. per lb. Dol. 819 : but being now sold with Damage, they weighed 5290 lb. making a 15 $\frac{1}{2}$ s. no more than Dol. 699 : 16 : 4, is Loss . . . 119 : 3 : 8
- 111 Bundles, qt. 544 Hides, black and very much damaged by the Sea-Water, which reckoned likewise at 36 lb. per Hide, make 19944 lb. this Weight, and if they had been found, would have fetched at the current Price of 21 s. per lb. Dol. 3490 : 4, but in the Condition as they were, weighed lb. 20847, a 15 $\frac{1}{2}$ s. making Dol. 2692 : 14 : 9, is Loss . . . 797 : 9 : 3

93 Bundles,

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93 Bundles, qt. 466 Hides wanting, being
flung over-board, a 36 lb. per Hide, are
16776 lb. and at the said current Price of
21 s. per lb. the Loss amounts to 2935 : 16

260 Bundles 1290 Hides Total Loss *Dol.* 3909 : 9 : 9

And We being likewise present at the Unloading of the Lead,
there were found no more than 354 instead of 456 Pieces, that
should have been a-board, consequently 102 Pieces were
wanting, which according to Invoice must be calculated at
240 lb. Leghorn Weight each, making 24480 lb. which at the
present current Price of 21½ *Ducats* brings the Loss to

Dol. 526 : 6 : 4

being *Duc.* 614 : : 8

Loss on the Hides 3909 : 9 : 9

Porters assisting at this Taxation 6

Dol. 4529 : 10 : 5

N^o. H. *Calculation of the General Average, that happened to the Ship
Industry, Capt. William Henry, by the throwing over-board
of 466 Hides and 102 Pieces of Lead, for the common Prefer-
vation of the Ship, Cargo, &c. viz.*

1300 Hides in 260 Bundles, Damage and Loss deducted, ac-
cording to the Valuation of the Appraisers thereunto ap-
pointed, amount to *Dol.* 7217

456 Pieces Lead at 240 lb. each, and 21½ *Duc.*
per 1000 lb. 2745

N^o. I. Half of the Ship : : : 500

⅓ of the Freight : : : 160

Dol. 10622

102 Pieces

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102 Pieces Lead flung over-board	Dol. 614
466 Hides ditto	2935
The Protest at Leghorn	12
Law Charges	32
The Appraisers Dues	2

Dol. 3595

Which Dol. 3595 divided upon Dol. 10622, as the Value of this Cargo, half of the Ship and one third of the Freight make for every Hundred Dol. 33 : 16 : 10 $\frac{1}{2}$
every Thousand . . . 338 : 8 : 7

Calculation of the Average, as the same was settled in London N^o. K. by G - - and G - - and Payment obtained accordingly from the Private Underwriters.

General and Particular Average upon Goods per the Ship Industry, Capt. Henry, from Liverpool to Leghorn, great Part of whose Cargo was thrown over-board in a violent Storm for common Preservation, viz.

Amount of 1300 Hides as per Invoice	£. 1464 : 16 : 8
Ditto of 456 Pieces Lead ditto	486 : 18 : 11
	<u>£. 1951 : 15 : 7</u>

For Security whereof must be insured
£. 2023 a 1 $\frac{1}{2}$ per Cent. and Policy

30 : 11 : 5

£. 1982 : 7

General

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General Average.

Particular Average.

1300 Hides
834 delivered damaged

466 flung over-board

456 Pieces Lead
354 delivered

102 thrown over-board.

The Hides cost $\text{£} 1064 : 16 : 8$ Their Share in the
Charge of Affu-
rance, if to in-
sure $\text{£} 1952$, re-
quires $\text{£} 30 : 11$,
makes for $\text{£} 1465 - 22 : 18 : 6$ $\text{£} 1487 : 15 : 2$ The Lead cost $\text{£} 486 : 18 : 11$
Share in the Affu-
rance - $7 : 12 : 6$ $\text{£} 494 : 11 : 5$ 466 Hides were flung over-
board.If 1300 cost $\text{£} 1487 : 15$ is
for 466 - $\text{£} 533 : 6$

Likewise 102 Ps.

Lead were thrown
over-board, if456 cost $\text{£} 494 : 11$
then 102 cometo - - - $110 : 13 : 4$ 834 Hides were delivered da-
maged, which in Proportion to
the 1300 cost $\text{£} 954 : 9$, and if
they had been delivered sound,
they could have been sold as fol-
lows:

150 Hides should weigh 5400 lb.

130 - - - - - 4680

554 - - - - - 19944

834 Hides to weigh 30024 lb.

a 21 s. per lb. are $\text{Dol. } 5254 : 6$ and at 50 d. per Dol. make
 $\text{£} 1094 : 13$ And according to
Account Sales,
they have been
sold but for $\text{Dol. } 887 : 19 : 2$

699 : 16 : 4

2692 : 14 : 9

 $\text{Dol. } 4280 : 10 : 3$ a 50 d. are - $891 : 15 : 6$ Difference $\text{£} 202 : 17 : 6$ Now if $\text{£} 1904 : 13$, which they
would have fetched, if sound,
loose as above $\text{£} 202 : 17 : 6$,
then $\text{£} 945 : 9$ the Amount of
the first Cost must loose $\text{£} 176 : 18$

Extra Charges

For the publick
Sale is charged
 $1\frac{1}{4}$ per Cent. but
should be only

Amount

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Amount of the
Goods flung
over-board l. 643 : 19 : 4

Deduct for what the Ship and
Freight have been obliged to pay
by Order of the Court of Pisa :

Upon half of the Ship
Dol. 500 and for $\frac{1}{3}$ of the
Freight

160

Dol. 660 a 33 : 16 : 10

per C. are Dol. 223 : 7 : 3

and at 50 d. 46 : 10 : 7

Remains for the

Cargo - l. 597 : 8 : 9

$\frac{3}{4}$ per Cent. upon

Dol. 4280, since

it costs $\frac{1}{2}$ per

Cent. Brokerage

when sold in the

ordinary Way

Dol. 32 : 2

To the Ap-

praiser 13 : 18 : 3

To Porters

for spread-

ing the da-

amaged Hi-

des, and

Lawyers

Fees 52

Dol. 98 : : 3

at 50 d. - - - 20 : 8 : 4

The General Ave-
rage amounts

to - - - 597 : 8 : 9

l. 794 : 15 : 1

If l. 2023 loose l. 794 : 15 : 1, it makes l. 39 : 5 : 8 d.
upon l. 100.

REMARK.

According to this Regulation of Mess. G. and G. thvtae prie No. L.
Assurers in London paid £. 39 : 5 : 8 d. per Cent. but when the
like Demand came to be made of the L. A. C°. it was ob-
served, if the Assured received

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From

CASE
XXIV.

From the Assurers for l. 2023 underwrote a		
l. 39 : 5 : 8 per Cent.	-	l. 794 : 15 : 1
From the Captain, for Ship and Freight		
Dol. 223 : 7 : 3, a 50 d.	-	46 : 10 : 7
For the Proceed of the Goods at Leghorn		
Dol. 5387 : 8 : 8, a 50 d.	-	1122 : 7 : 8
		l. 1963 : 13 : 4
That he would fall short of the Prime Cost,		
which with the Premium of Insurance		
amounted to l. 1982 : 7, near 1 per Cent. or		18 : 13 : 8
		l. 1982 : 7

N^o. M. And upon a closer Examination of the said Calculation it was discovered, that the Difference arose from the three following Points :

First, In the Position, where it is said, If upon the Sale for l. 1904 : 13 there was a Loss of l. 202 : 17 : 6, it must be the same also upon the Prime Cost of l. 954 : 9, whereas this Loss of l. 202 : 17 : 6 ought to have been calculated upon the neat Proceed at the Sale after the Freight and Charges were deducted, and not upon the gross Produce of the Sale, which consequently was to the Prejudice of the Assured.

Secondly, In demanding of the Assurers l. 643 : 19 : 4 for the Goods thrown over-board, which was the Cost of them with the Premium of Assurance, and then dividing the same upon l. 2023, to which the Cost and Premium amounted, besides the 2 per Cent. by paying 98 per Cent. only, it was therefore a Prejudice to the Assured, that these 2 per Cent. were not likewise added to the l. 643 : 19 : 4 d.

Thirdly, It was to the Prejudice of the Assurers, to demand of them, the whole Difference from $18\frac{7}{8} : 15\frac{1}{4} : 15\frac{7}{8}$, for which the damaged Hides were sold, to 21 s. which was indeed the Market Price of sound Hides, but not for ready

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ready Money, but to pay at the usual Time of 3 or 4 Months, and therefore the Discount of 3 per Cent. ought to have been first deducted from the 21 s. as well in this Account of the Hides, as it was in that of the Lead.

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In order therefore to rectify this Account upon the Footing as Mess. G. and G. have drawn it up, there should have been deducted from the Value of 834 Hides, which if found, would have been worth *Dol.* 5254 : 6

N°. N.

But fetched only - - - *Dol.* 4280 : 10

For Freight and Charges,
which upon 1300 Hides
would have amounted
to 616 *Dol.* and is
upon 834 Hides

Dol. 395 : 4

Dol. 395 : 4

Commission and
Brokerage 2 1/2
per Cent.

131 : 7

107

526 : 11

502 : 4

Dol. 4728 : 17

Dol. 3778 : 6

a 50 d.

l. 985 : 3 : 6

Loss

l. 787 : 4 : 7

197 : 18 : 11

l. 985 : 3 : 6

Consequently these l. 985 : 3 : 6 were diminished exactly l. 197 : 18 : 11, which upon the Cost and Premium of l. 954 : 9 instead of l. 176 : 18 is

l. 191 : 15 : 6

And the extra Charges, as they calculate them, 98 *Dol.* a 50 d. are

20 : 8 : 4

Further they have taken no Notice, that the Freight was paid for the whole 1300 Hides, when only 834 Hides came to Hands, where- by the Assured looses in the Freight *Dol.*

192 : 17, a 50 d.

40 : 3 : 6

N n 2

As

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CASE XXIV. As also by the Cost of the Goods flung over-board, viz.

466 Hides - $l. 533 : 6$
 102 Pieces Lead - $110 : 13 : 4$

$l. 643 : 19 : 4$

Deduct, so much received of
 the Captain -

$46 : 10 : 7$

$597 : 8 : 9$

Lastly the 2 per Cent. which fall short on

$l. 643 : 19 : 4 d.$ by receiving only 98 per Cent.

$12 : 17 : 7$

$l. 862 : 13 : 8$

But on the other Hand there was charged too

much to the Assurers on $Dol. 5254 : 6$ 3 per

Cent. $Dol. 157 : 12$ a 50 d.

$32 : 16 : 8$

$l. 829 : 17$

N^o. O. And consequently dividing these $l. 829 : 17$ upon the Capital, being with the Premium $l. 2023$ to receive 98 per Cent. make $41\frac{1}{4}$ per Cent. which they might with Justice have demanded of the Assurers.

N^o. P. But to make the Account more short and plain, let us say, If the Whole had arrived in Safety, the 1300 Hides at 36 lb. would have weighed lb. 46800, a 21 s. $l. 49140$, a 6 l.

$Dol. 8190$

Deduct 3 per Cent. for prompt Payment

$245 : 14$

$Dol. 7944 : 6$

456 Pieces Lead, a 240 lb. are 109440 lb.

a 21 $\frac{1}{2}$ s. - $Duc. 2352 : 19$

at 16 $\frac{2}{3}$ per Cent. Agio - $392 : 3$

$Dol. 2745 : 2$

Deduct from $Dol. 232 : 14 : 2$

a 2 per Cent. -

$2506 : 7 : 10$

a 3 per Cent. -

For prompt Payment -

$79 : 18$

$2665 : 4$

$Dol. 10610$

Freight

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Freight and Primage	-	Dol. 538 : 14
Unloading, the Hides, 59 Ps. 2s.	88	
the Lead, 92 Ps.	-	122
Commission a 2 per Cent.	-	212 : 4
Brokerage a $\frac{1}{2}$ per Cent.	-	53 : 1
		1013 : 19

In Case there had been no Damage, nor any Thing thrown over-board, the neat Proceed would have been - - - - - Dol. 9596 : 1

But now it has produced only
Dol. 5387 : 8 : 8

General Average received from
the Captain - - - - - 223 : 7 : 4

5610 : 16

Loss Dol. 3985 : 5

Consequently upon Dol. 9596 : 1 were lost Dol. 3985 : 5

a 50 d. £. 1999 : 3 : 6 £. 830 : 5

Which upon the Whole differs but a Trifle, and brings it to $41\frac{1}{3}$ per Cent. to be paid upon £. 2023.

Accordingly the Assured would receive from the Assurers for £. 2023, a $41\frac{1}{3}$ per Cent.

From the Captain - - - - - £. 830 : 5

46 : 10 : 7

From Leghorn for the neat Proceed

Dol. 5387 : 8 : 8, a 50 d. - - - - - 1122 : 7 : 8

£. 1999 : 3 : 3

Which agrees with what he ought to receive according to the above Account, if the same had been made right.

Of this the *London Assurance Company* was not remiss to acquaint him, but apprehending, that their Right in the Manner of settling the general Average at *Leghorn* had not been sufficiently defended, they agreed to pay him 39 per Cent.

N^o. Q.

And

CASE
XXIV.N^o. R.

And it was not without good Reason they alledged against the Assured, that he did not make his Objections in the Court of *Pisa*,

First, Against the letting the Goods bear a larger Share of the general Average, than for what they produced neat at *Leghorn* after deducting the Freight and Charges.

Secondly, In not insisting on better Proof of the real Value of the Ship, which upon the bare Word of the Captain is against all Probability set down at an even Sum of 1000 Dollars only, and for no more than 160 Doll. Freight, for it ought to have contributed for $\frac{1}{3}$ of its Brutto-Freight, which apparently could not be so little.

Thirdly, As the Court of *Pisa* decreed, that the full Freight should be paid, notwithstanding near one third Part of the Cargo was flung over-board, it therefore admitted of no Manner of Doubt, nor could it have been refused, if properly represented, to include this wanting Freight in the General Average, and to make the Ship and Freight itself contribute thereto, in Proportion to their Value.

N^o. S.

Upon this Footing the Calculation of the General Average would have stood in the following Manner :

The whole Value of 1300 Hides at 21 s. was	Dol. 8190
Deduct the Damage	973
	Dol. 7217
The full Value of the Lead	2745
	Dol. 9962

From which likewise must have been deducted

The Freight	Dol. 538 : 14
For unloading	88
ditto	122
prompt Payment, 2 and 3 per Cent.	285 : 14
ditto	79 : 18
	1115 : 6
	Dol. 8846 : 14
	For

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CASE
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For half the Value of the Ship	-	Dol. 500
For $\frac{1}{3}$ of the Freight	- - -	160

Dol. 9506 : 14

Whereupon to be divided

The Value of the Hides flung over-board	Dol. 2935
Ditto of the Lead	- - - 614

Dol. 3549

Deduct 3 per Cent. Discount	-	106 : 10
-----------------------------	---	----------

Dol. 3442 : 10

Extra Charges	- - -	46
---------------	-------	----

Freight of Goods thrown over-board	-	192 : 17
------------------------------------	---	----------

Dol. 3681 : 7

And accordingly upon the Dol. 660 for Ship and Freight should have been allowed 259 Dol. instead of Dol. 223 : 7 : 3, and as in all Probability half the Value of the Ship should have been set at Dol. 1000 instead of 500 Dollars, in Consideration of which several Errors the Deduction of $2\frac{1}{2}$ per Cent. was allowed out of the $41\frac{1}{2}$ per Cent. to the L. A. C. and the Payment of the Loss settled at 39 per Cent.

CASE

Cases of Insurances.

C A S E XXV.

A Regulation made at Leghorn by way of a gross Average for the Ransom of a Cargo of Wheat from London in the last War ; thereby shewing, 1st, What was paid by the Insurers at Leghorn ; 2dly, What was paid by the Insurers at London.

Most Illustrious Lords ! Most respectful Patrons !

N^o. A.

WE the hereafter-named Calculators, nominated and appointed by Your Illustrious Lordships to make up the Account of Average of the Ship called the *Five Brothers*, *Charles Alden*, Master, navigating under *British* Colours, do hereby make our Report in relation to the Charges disbursed by the said Master for the ransoming and recovering of his said Ship and Cargo from Capt. *Bompard*, Commander of the *French* Man of War called the *Conquerant*, who had taken the same in the Gulf of *Gibraltar* ; as also in relation to the Gratuity allowed by Your Illustrious Lordships on Account of the said Ransom made for the general and common Good to be proportioned, together with the Costs of this Cause and our Commission Fees, on the Amount of the Cargo of Wheat which is arrived and consigned to Messrs. *Robert Perryman* of *Leghorn*, and on the full Value of the said Ship and her Appurtenances, and on two Third Parts of the Freight agreed on, for carrying the said Cargo of Wheat from *London* to *Leghorn* aforesaid, which accordingly we do report as follows :

Hereunder is the Specification of the Amount of the Cargo of the Ship and her Appurtenances, and of Two Thirds of the Freight.

There were shipped on board in *London*, consigned to Messrs. *Robert Perryman* and C^o. 1578 Quarters of *English* Wheat, valued

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valued in the Whole, as it appears by Your Illustrious Lordships Decree of the 30th of May last past, at *Dol.* 12331 :

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The Ship and her Apparel, according to your said Decree, is rated at - 8000 :

The Two Thirds of the Freight, which is in all 433 Dollars, amount, pursuant to the Decree, to - 2955 :

Dol. 23286 :

Hereafter follows the Specification of what is to be re-partitioned in Average.

For the Amount of 1600 *l. Sterl.* for which the said Capt. *Alden* gave a Bill of Exchange to the said Capt. *Bompard* payable by the said Messrs. *R----* *P-----* and *C°*. liquidated and rated, as it is expressed in the said Decree, at - *Dol.* 7452 :

For a Gratuity and Recompence allowed to the said Capt. *Alden*, being comprehended therein what is due to the second Mate, sent and left on board Capt. *Bompard's* Ship as an Hostage, according to the said Decree - 1640 :

For Consul's Fees paid at *Legborn* - 7 :

For the Charges of the Law-Suit taxed 66 :

For our Commission in regard of the Taxation NB. 42. - 2 :

Dol. 9207 :

Which 9207 Dollars being the Amount of the said Gratification, Ransom and other Charges abovementioned are to be proportioned on the 23286 Dollars, the Valuation and Amount of the Cargo of Wheat, of the Ship and her Appurtenances, and Two Third Parts of the Freight, and are as follows, viz.

On each 100 Dollars - *Dol.* 39 : 10 : 9 $\frac{1}{2}$

On every 1000 Dollars - 395 : 7 : 9

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This is what we have to report to your Most Illustrious Lordships, in Conformity to your Decree of the 30th Day of May last past, wherewith we are with profound Veneration,

Your Most Illustrious Lordships

Most devoted and humble Servants

GIO. BAT. FIESOLE,

GIO. BAT. BERRETTI.

June 1st, 1748.

THE Most Illustrious Lords, the Consuls of the Sea of the City of *Pisa*, sitting in Court, &c. After having seen the the foregoing Calculation and the Contents thereof with whatever else, &c. And deliberated what was to be deliberated, have approved, and do will and approve of the same in every Part, commanding the Observance thereof. *Et &c. non solv.* but in all, &c. In the Presence of

RANIERI MAGNOLFI,
and
GAETANO CURRINI, } Witnesses.

CAM. PIOMBANTINI,
Secretary.

Most Illustrious Lords, much respected Patrons!

N. C. IN Obedience to Your Lordships Decree of the 7th last past, We the underwritten Examiners, having repaired to be present at the unloading of the Wheat brought into this Port by the Ship called the *Five Brothers*, commanded by the *English* Captain *Charles Alden*, coming from the River of *London* consigned to Messrs. *R. P. and C.* *English* Merchants trading in this City, do hereby make our Report to Your Lordships: That there have been unloaden from out of the said Ship in all and in the Whole 6088 $\frac{2}{3}$ Sacks, which being in every Parcel so as they came out of the Ship, examined and searched by us, we have found the following Losses and Damages, which we now mention as follows:

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85 $\frac{1}{2}$ Sacks of Wheat aforefaid intirely spoiled and stinking, made thus by the Sea-Water, and not being worth the Charges to have the same restored, we ordered the same to be publickly sold here, when they fetched 9*l.* 4*s.* *per* Sack: And whereas in its good Condition they could have been sold at 19*l.* *per* Sack, there is found 9*l.* 6*s.* *per* Sack Average, which amounts to 793 *l.* 12*s.* 6*d.* *per* P. - *Dol.* 132 : 5 : 4

11 $\frac{1}{2}$ Ditto, still worse of Quality and stinking, being spoiled by the Sea-Water as abovefaid, and sold likewise in public for 7*l.* *per* Sack, which at the Price abovefaid of 19*l.* *per* Sack, if they had arrived in a good Condition, makes an Average of 12*l.* *per* Sack, which amounts to

22 : 13 : 4

448 $\frac{1}{2}$ Ditto, found wetted and moist by the Sea-Water, with some mixed Grains of rotten and spoiled Wheat, whereof we rate the Average at 1*l.* $\frac{1}{2}$ *per* Sack, which makes -

112 : 3 : 4

5543 $\frac{1}{2}$ Ditto, without any Damage or Average at all - - -

: : :

6088 $\frac{1}{2}$ Sacks of Wheat aforefaid, with a Damage of -

Dol. 267 : 2 :

And for 1545 Sacks which are damaged to the Degree following :

632 Sacks quite rotten and torn to Rags, of no Value, which we rate at 1*l.* *per* Sack, the Average amounts to

105 : 6 : 8

745 Ditto damaged and rotten, whereof we rate the Damage at 10*s.* *per* Sack, makes -

62 : 1 : 8

168 Ditto deficient or missing, which at 1*l.* *per* Sack amount to -

28 : : :

1545 Sacks. The whole Average we declare to be -

Dol. 462 : 10 : 4

O o 2

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We therefore do report that all the Damages and Average on the said Cargo of Wheat amount to 462 Dollars, 10 Soldi, and 4 of 8rs.

This is what we are obliged to report to Your Most Illustrious Lordships according to our Experience and Conscience, to whom we pay our greatest Respects, and are

Your Most Illustrious Lordships

Most humble and devoted Servants,

Leghorn, June 5, 1748.

SANTI DU TREMOUL,
GIO. SEBASTIANO BICHI.

June 6th, 1748.

*The most Illustrious Lords Consuls of the Sea, in the City of
Pisa, sitting in Court, &c.*

N^o. D.

AT the Requisition of Messrs. R—— P—— and C^o. English Merchants of the City of Leghorn, in the Cause of Liquidation of Damages on the hereafter-mentioned Goods, do approve and publish the Report and Estimation of the Average found on the Cargo of Wheat arrived from London on board of the Ship the *Five Brothers*, commanded by the English Capt. Charles Alden consigned to the said Requirants; and do further fix the Term of five Days to Messrs. Laxaro Damiani and C^o. and to the said Capt. Alden, to say and to alledge what they have to object to the same, so as the same is made and sent in by Messrs. Santi du Tremoul, and the Consul Gio. Sebast. Bichi, the Examiners constituted by another previous Decree of their Lordships whereby they rated the Fee due unto them for their said Report, to the Sum of 6 golden Ducats, one Moiety for each of them. All which, &c. in the Presence of

RANIERI MAGNOLFI,
and
GAETANO CURRINI,

} Witnesses.

CAM. PIOMBANTINI,
Secretary.

On

On the 15th Day of June, 1748.

*The most Illustrious Consuls of the Sea, in the City of Pisa,
sitting in Court, &c.*

AT the Requisition of Messrs. R—— P—— and C°. English Merchants of the City of Leghorn, in the Cause of Liquidation of the Damages depending between the said Gentlemen on the one Part, and Capt. *Charles Alden* and *Lazaro Damiani* and the Insurers on the other Part, seeing that by the said Capt. *Charles Alden* and *Lazaro Damiani* and other Consorts in this Cause, no Objections or Allegations have been made or brought in, within the Term unto them prefixed, against the said Report and Estimation made and sent up by Messrs. *Santi du Tremoul* and Consul *Gio. Sebastiano Bichi* relating to the Damages on the Cargo mentioned in this Cause, have declared that the same shall be deemed as approved of by both Parties. All which, &c. in the Presence of

RANIERI MAGNOLFI,
and
GAETANO CURRINI, } Witnesses.

CAM. PIOMBANTI,
Secretary.

In the Name of God, *Amen.*

WE *Cberalius Quintilio Galliotti* and *Niccolo Cambi*, Nobles of *Florence*, and Consuls of the Sea of *Pisa*, ordinary Judges in Civil, Maritime, Mercantile, and mixt Causes, for his Imperial Majesty.

In the Cause of Assurance, or particular Average between Messrs. R----- P----- and C°. in their respective Qualities hereafter mentioned, the Insured, on the one Part, and *Paul Bonfil* and others in this Cause, the Insurers on the other Part.

Having

Having seen the Demands of the said Messrs. R--- P--- and C°. in their respective Qualities, with divers Policies of Insurance produced and exhibited on the 3d of July 1748, and the Tenor thereof.

Having seen the Petition of the said Messrs. R--- P--- exhibited in Writing on the 16th ditto, with its Tenor.

Having seen the Exceptions drawn in Writing by the said Messrs. Bonfil and Consorts: exhibited on the 29th of July with the Tenor thereof.

Having seen an Instrument of the said Messrs. R--- P--- and C°. in their respective Qualities, with the produced original Invoice, Copies of Letters, and Accounts exhibited on the 9th of August, and the Tenor thereof.

Having seen a written Reply of the said Messrs. R--- P--- and C°. exhibited the 13th ditto, and its Tenor.

Having seen an Instrument of the said Bonfil and Consorts exhibited on the 17th ditto, with the Tenor thereof.

Having seen the Summons to hear Sentence to be pronounced on this present Day, of the Date hereunder written. And having in general observed all that ought to be observed, and considered what ought to be considered.

After having invoked the the most Holy Name of God, we do declare, pronounce and decree: That the Allegations and Matters explained, claimed and demanded in Behalf of the said Messrs. R--- P--- and C°. the Insured, not only for themselves and for their Account, in relation to the One Half Part or Moiety belonging unto them, of a Cargo of Wheat, coming from London unto them consigned, and arrived at Leghorn in the English Ship the *Five Brothers*, Capt. Charles Alden, Commander; as likewise as Commissioners, and for the Account of Messrs. V---, P---, and A---, of the said City of London, relating to the other Half Part or Moiety of the said Cargo belonging unto them; against the said Messrs. Saul Bonfil and many others named in the Acts as Insurers of the whole Amount

Amount of the first-mentioned One Half Part or Moiety valued in the respective Policies of Assurance at 5500 Dollars of 8 *rs.* and of the Amount of 1500 Dollars of 8 *rs.* of the other second Half or Moiety, were and are just and true, and can be lawfully claimed and demanded in the Manner alledged, and that they accordingly, in the Form hereafter mentioned, ought to be granted and yielded. Wherefore we do declare, That the said Messrs. *Saul Benfil* and Consorts in this Cause, the Insurers, ought to be condemned; and we do hereby condemn them, that they shall concur to the Amount of the respective Sums insured by each of them as abovesaid, amounting in all and from all, to the Sum of 7000 Pieces of 8 *rs.* as also the said Messrs. R--- P--- and C°. in their Quality of Attornies, and impowered by the said Messrs. V---, P---, and A--- for the Amount of 4000 Dol. being the Valuation of the Rest of the One Half or Moiety of the said Cargo of Wheat, for their Account, which is not insured in *Leghorn*, for Refaction and to make good, all and every one of them by Sols and Livres, and on a particular Average, the Loss and Damage suffered by the said Messrs. R--- P--- and C°. respectively in the said Cargo of Wheat. Notwithstanding they by Virtue of the foregoing Decree of our Court, dated on the 30th of *May* last past, were obliged by the same to come into a general Average, to ransom the said Ship from out of the Hands of the Commander of a *French* Man of War, who had taken her, and for a Gratuity granted to the said Capt. *Alden*, who made the said Ransom, as also to contribute for the Damage and wetting caused by the Sea-Water to the said Wheat found at the Time of her unloading the same at *Leghorn*: All which, according to the Calculation and Account of the general Average annexed to the said preceeding Decree, and according to the Valuation made by sundry skillful Examiners of the said Damage and Wetting caused by Storms and Tempest, which is already approved of by another Decree of this Court, dated on the 15th Day of *June* last past, which we declared to amount, together with the Costs of the said Examination, to 5354 Dollars, 11 Sols, and 2 of 8 *rs.* deducting however from the said total Sum of Dol. 5354: 11: 2 in Favour of the said Insurers of the said Messrs. R--- P--- and C°. for themselves, all that may come from the Contribution,

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tribution, in Concurrence with the said Insurers of Messrs. C--- B---, who is an Insurer of the said Messrs. R--- P--- and C'. for their Account for the Profit, by him signed for 500 Dollars of 8 *rs.* to make good the said Profit with the Refaction of such a Proportion of the said Wheat, which, according to the Valuation made thereof at *Leghorn*, in relation to this present Average, in Livres *per Sack*, as far as it exceeds the prime Cost, and the neat Charges of the one Moiety belonging to the aforesaid Messrs. R--- P--- and C'. in Property. To whom, for their Re-imbursment and Indemnification, we do reserve their Actions and Pretension whatsoever against the said Messrs. B---; ordaining, as we do hereby ordain, that the Repartition abovementioned of the said Sums for Damage (the said Deduction excepted) and the neat Cost and Charges of this present Court, shall be made in a just Calculation of what is aforesaid in due Form, by Messrs. *Gio. Battista Fiesole* and *Gio. Battista Berretti*, whom we chose for that Purpose as experienced Calculators, to make their Report thereof, with Reservation for the Approbation of this our Tribunal, and pronouncing, so we do hereby pronounce, in Favour of the said Messrs. R--- P--- and C'. in their respective Characters, against all and every one of the said Gentlemen Insurers named in the said respective Policies, for the respective Proportion to each of them relating, and do grant unto them all necessary, lawful and permitted Power of Execution, according to Law. Thus, &c. not only, &c. but in all, &c.

This present Decree was and is pronounced by the said Illustrious Lords the Consuls of the Sea of *Pisa* sitting in Court; and is read and published by me the underwritten, on this 23d Day of *August*, 1748, in the Presence of

RANIERI MAGNOLFI,
and
GAETANO CURRINI, } Witnesses.

CAM. PIOMBANTI,
Secretary.

We

WE the underwritten Doctors and Advocates here in *Leghorn*, do certify that Dr. *Camillo Piombanti*, by whose Hand this present Copy is signed, is, as he stiles himself, Secretary of the Court of the Illustrious Lords the Consuls of the Sea of *Pisa*; and this we do attest as being intirely well known to us, and by the Knowledge we have of his Firm and Signature, and in Testimony, &c.

I Dr. ANDROMACO MONTIGIANI,
I Dr. GIO. FRANCO NIBBI.

IThe Underwritten do attest that the foregoing Attestation has been signed and sworn to in due Form before me, by Dr. *Andromaco Montigiani* and *Gio. Franco Nibbi*. In Testimony whereof, &c.

Leghorn, Sept. 12, 1748.

(L. S.) JOANNES BAPTISTA GAMERRA,
Not. Publ.

WE the underwritten Merchants here in *Leghorn* do attest, that the above-written Dr. *Gio. Battista Gamerra* is, as he stiles himself, a Notary Public, and that to his Firm and Signature full Faith and Credit is given in Court and without; and in Testimony thereof, &c.

ENRICO CHRISTIANO LUTYENS,
GUG^{MO}. AIKMANN.

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N^o. G.

Illustrious Lords, respected Patrons!

WE the underwritten skillful Calculators, chosen and appointed by your Magnificences, to draw up a Calculation of the particular Damage suffered on the Cargo of Wheat arrived from London at Leghorn, consigned to Messrs. R----- P----- and C^o. in the *English Ship the Five Brothers*, Capt. *Charles Alden*, Commander: One Moiety of which said Cargo belongs to the said Messrs. R----- P----- and C^o. and the other Half or Moiety to Messrs. V-----, P-----, and A----- of London; do make our Report: That whereas the said Damage, as appears by the Demonstrations, produced in the Acts, and by the Tenor of Your Decree, bearing Date 29th of *August* last past, doth amount in the Whole to the Sum of Dol. 5354 : 11 : 2 of 8 rs. together with the *further Costs of this Cause and our Commission*, a just Repartition in Livres and Shillings is to be made by us, of the one Moiety thereof on Messrs. *Paul Bonfil*, *Maise Vita Franco* and the Rest of the Insurers, in Favour of the said Messrs. P----- and C^o. for their own Concern, as signed and underwritten in the Policy of Assurance, from the 29th Day of *December* 1747, to the 4th of *January* following, as appears by the same Proceedings; as also at the same Time on Messrs. B----- and B-----, who are the Insurers of the Profit, in relation to that Moiety of the Cargo which belongs to the said Messrs. R----- P----- and C^o. each of them in Proportion to their respective Sums of Insurance, amounting in all to 6000 Dollars of 8 rs. as likewise of the other Moiety of the said Damage and Cost, on Messr. *Nicolao Maria Cavagnano*, and those other Insurers that are mentioned and have signed another Policy of Insurance, dated the 11th of *January* aforesaid, the insured Sums whereof amount in all to Dol. 1500; as also further on the said Messrs. P----- and C^o. of this Place, as Attornies and Commissioners of the said Messr. V-----, P----- and A-----, of the said City of *London*, for and on Account of the Remainder of the Amount of the said Moiety of the Cargo, unto them belonging, which is not insured at *Leghorn*, and amounts to Dol. 4000 of the same Coin: All which we do accordingly proportion as follows:

Here

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Here follows a Specification of the respective Sums under-
written and expressed in the Policy of Insurance aforesaid,
from December 29th, 1747, to the 4th of January follow-
ing, together with those of Messrs. Bowen and Berenbergh,
the Insurers of the Profit, and who must concur in the Re-
faction of the Moiety of the said Damages,

Mr. Paul Bonfil, for	-	Dol. 700
Moise Vita Franco	-	500
Antonio Valentin and Comp.	-	300
Nadal and Comp.	-	400
The Widow Mezrell and Jacomo Champlan	-	200
Mr. Ambrosio Galeano Bonaini	-	300
Lazaro Damiani	-	500
Mfirs. Holden and Jermy	-	800
Matteo and Luvigi Blaquiere	-	300
Giov. Amato Chevet	-	300
Enrico Scroope	-	300
Cornelio Berenberg	-	300
Gio. di Martino	-	300
Antonio Belafise	-	300
Bowen and Berenbergh, Insurers of the Profit	-	500
Make		Dol. 6000

Specification of the Amount of the Moiety of the Damage,
Costs, &c. to be re-partitioned over the said Gentlemen
Insurers:

The said Damages, amounting in the Whole as aforesaid to	
Dol. 5354 : 11 : 2 neat, the Moiety thereof is	Dol. 2677 : 5 : 7
The one Moiety of the Costs of this Suit, is	
taxed to be	20 : 2 : 5
Our Commission for the one Half is	1 :
Make	
	Dol. 2698 : 8

P p 2

Which

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Which said 2698 *Dol.* 8 s. being the Amount of the one Moiety of the Damages and Costs, and repartitioned on the aforesaid total Sum of 6000 Dollars of the above specified respective Sums comes out as follows, viz.

N ^o . H.	On each one Hundred Dollars	-	<i>Dol.</i> 44 : 19 : 5½
	one Thousand	-	449 : 14 : 7
		[a]	

Here follows a Specification of the insured Sums expressed in the other Policy of Jan. 11. 1747. together with the remaining Risk of Mess. R-- P-- and Comp. in their said Quality not insured in Leghorn, viz.

Mr. Nicolo Maria Cavagnano, for	<i>Dol.</i> 800
Mess. Boissier Cholmly and Comp. for	- 400
Mr. Giov. Batt. Negrolini, for	- 300
Mess. R-- P-- and Comp. in their said Quality, for the Rest, not insured at Leghorn	- - - 4000
make	<i>Dol.</i> 5500

[a] But as these beforementioned *Dol.* 5354 : 11 : 2 consisted of
Dol. 4875 : 10 gross Average a *Dol.* 39 : 7 : 9 on
 the neat Value of the Loading the
 same yielded at Leghorn, being
 Dol. 1233r

	and	
462 : 10 : 4	as Damage received	- 462 : 10
16 : 10 : 8	for Charges of Law	- 16 : 10

Dol. 5354 : 11*Dol.* 12810

So the above Regulators at Leghorn for the

<i>Dol.</i> 2677 : 5 : 4	} <i>Dol.</i> 2698 : 8 on the one Moie-
29 : 2 : 5	
I	
	ty, ought to have charged it
	on - - - <i>Dol.</i> 6405

And thus make the Owners of the Cargo bear their Proportion of 405 Dollars themselves.

Here

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Here follows a Specification of the one Moiety of the said Damages, to be repartitioned over the said Gentlemen Insurers.

One Moiety of the said Damages as afore mentioned amounts to	-	-	-	Dol. 2677 : 5 : 7
One Moiety of the Charges of this Cause				20 : 2 : 5
One Moiety of our Commission	-			I
make				<u>Dol. 2698 : 8</u>

Which 2698 Dollars 8 Sh. the Amount of one Moiety of the Damages and Costs aforesaid being on the 5500 Dollars the Amount of the said insured Sums and in Proportion on the Remainder of the Risk, which is not insured, comes out as follows, viz.

On every one Hundred Dollars	-	Dol. 49 : 1 : 2	N°. P.
one Thousand	-	490 : 11 : 8	

This we do report to Your Illustrious Lordships in Conformity to your Decree of the 23 Day of *August* last past, and thus paying our most profound Respect, we are

Your Lordships

Most humble and most obliged Servants

Pisa, Sept. 5th
1748.

GIO. BATT. FIESOLE, Calculator.
GIO. BATT. BERETTI, Calculator.

September 7th 1748.

THE Illustrious Consuls of the Sea of the City of *Pisa* sitting in Court, upon the Cause of Insurance, or particular Average, between M^{rs}. R— P— and Comp. the Insured, relating to a Cargo of Wheat by the Ship the *Five Brothers*, Captain *Charles Alden*, on the one Part, and Mr. *Paul Bonfil* and other Insurers, on the other Part.

After having considered, what was to be considered, do decree, nevertheless without Prejudice of M^{rs}. B—n and B—g, who have been summoned to appear to this Decree, and do hereby approve of the Calculation, made pursuant to their Lordships

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ships former Sentence, of the 23 Day of *August* last past by those skillful Persons, named in the said Sentence, and do command the Gentlemen Insurers mentioned in the said Calculation to observe the same, exclusive however for the present of the said Mess. B---n and B---g, as above mentioned, against whom they do reserve to the said Mess. R-- P-- and Comp. their Actions, and without Prejudice to those Claims, which they have against the other Gentlemen Insurers, to make good the Deficiency, which they may suffer by the said Mess. B---n and B---g, against whom they do reserve to declare by a future Decree, what the Laws require, all which in every Respect by these presents, &c.

RANIERI MAGNOLFI,
and
GAETANO CURRINI,

} Witnesses.

CAMILLO PIOMBANTI,
Secretary.

WE, the underwritten Doctors and Advocates of this City of *Leghorn*, do certify, that Dr. *Camillo Piombanti*, by whose Hand this present Copy is signed, is as he styles himself Secretary to their Illustrious Lordships, the Consuls of the Sea of *Pisa*, and this we do attest because it is intirely and perfectly well known to us, by the frequent Knowledge we have of his Firm and Signature. In Testimony whereof, &c.

I ANDROMACO MONTIGIANI, Dr.

I GIOVANI FRANC. NIBBI, Dr.

THE foregoing Attestation has been confirmed and sworn to in due Form by the Gentlemen and Doctors, *Andromaco Montigiani* and *Giovani Franc. Nibbi*, before me, in Testimony whereof, &c.

JOANNES BAPTISTA GAMERRA,

Sept. 12. 1748.

Not. Publ.

(L. S.)

We,

WE, the underwritten Merchants of this City of *Leghorn*, do certify, that the above signed Dr. *Giov. Battista Gamerra* is as he styles himself a Notary Publick, and that to his Firm and Signatures full Faith and Credit is given in Court and without, and in Testimony whereof, &c.

ENRICO CHRISTIANO LUTTENS,
GUGLIELMO AIKMAN.

Amount of the Invoice of 1578 Quarters of Wheat per the
Five Brothers, Capt. Alden. N^o. L.

£. 2014 : 18 : 6 is for our Half - £. 1007 : 9 : 3

£. 800 insured in London, a 10
Guineas per cent. £. 84 : 4 : 6

Dol. 1500 ditto in *Leghorn*, a
8 per cent. are with Com-
mission and Brokerage Dol.

138 : 10, a 51½ - 28 : 14 : 5

112 : 18 : 11

£. 1110 : 8 : 2

To cover £. 1007 (being the Prime Cost) so that in Case of an Accident the Insured may be no Sufferer, and allowing 10 per cent. Premium and 2 per cent. Deduction, the Sum insured must have been £. 1145.

Surveyor's Trouble and Law Charges at

Pisa - - - Dol. 16 : 10

Law Charges regulating the Average - 42 : 4 : 10

To so much the Cargo contributed for Ran-
som and Salvage, as per the Magistrates

Decree - - - 4875 : 10 : 10

Charges going to *Pisa* to solicit
the Suit - Dol. 106 : 10

Law

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Law Charges at Pisa - 257 : 5 : 3
 Ditto in Leghorn - 103 : 10

£. 467 : 5 : 3
 at 115 s.

81 : 9 : 11

Dol. 5015 : 15 : 7

Our Half

Dol. 2507 : 17 : 8

Mess. R-- P-- and Comp. charge in Account current for their Commission and extra Trouble in appearing and proceedings against the Captain, who detained and claimed the Whole as his Property, pretending that the Ransom was for his Benefit - -

80 : 18 : 11

Dol. 2588 : 16 : 7

Charges for translating the Papers and Copies from Leghorn - a 51½ d.
 Postage of Letters - £. 3 : 17
 2

£. 555 : 10 : 4

5 : 17

On £. 1145 is £. 48 : 19, a 10 per cent.

£. 561 : 7 : 4

N°.M.

Demand of

V. P. A.

London, the 31 December 1748.

Adjusted at London £. 600 insured on Goods in the Five Brothers, Capt. Samuel Alden, from London to Leghorn, taken by the Conquerant Man of War, a 48 per cent.

£. 288

Deduct our Commission ½ per cent.

1 : 8 : 10

N°.N.

£. 100 signed by C. H. }
 100 - by T. K. }

£. 286 : 11 : 2

G. G.

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As it appears that this Cargo yielded a Profit at *Leghorn*, undoubtedly that Profit ought to have born its proportional Part of the Ransom, for if it had not been ransomed, that Profit would not have been obtained.

N°. O.

The *Leghorn* Calculators began right enough in the Account of the general Average to make the Cargo contribute for its neat Value there, being 12331 Dollars, a Dol. 39:10:9½ per cent. but (as already observed in the Note at the Bottom of Page 302.) they were in the wrong in charging the Half of this Ransom on the Sum of 6000 Dollars, for it might have happened, that one Half of the Cargo had yielded 10000 Dollars neat, and in such Case would it have been reasonable that the Proprietor should go entirely free from contributing for the 4000 Dollars clear Profit? And by this it appears very evidently, that the *London* Adjustment at 48 per cent. was likewise wrong, or Part of the Wheat must have been sold at lower Prices than what the foregoing Papers declare.

N°. P.

N°. Q.

N°. R.

If we compute 6088½ Sacks of Wheat at £. 19, is £. 115684½, which at 6s. makes Dollars 19280

N°. S.

Freight	-	-	Dol. 4433
Primage 10 per Cent.	-	-	443
Charges of Landing and Com-			
miffion	-	-	1594
			6470

There remain Dol. 12810

It will then nearly tally with the Contribution made thereon in the gross Average, which

N°. T.

on Dol. 12331

at Dol. 39:10:9½

make

Dol. 4875:10:10

Vol. I.

Qq

Brought

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Add thereto

462 : 10 : 4

for particular Da-

mage on the

Wheat

and

16 : 10

particular Char-

ges

479 : : 4

So that on *Dol.* 12810 :

: 4

the Ransom

and Damage

amount to-

gether to

Dol. 5354 : 11 : 2N^o. U.

Which comes out at *Dol.* 41 : 16 : 3 *per Cent.* and corresponds with *Dol.* 40 : 19 : 3 *per Cent.* for £. 100 to pay 98, and is what in Reality the Insurers ought to have paid, and no more.

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CASE XXVI.

Shewing how a General Average was regulated by the Commissioners of the Assurance Company of Amsterdam.

ATESTATION and Account delivered to the Company by M. and Sons, concerning the Loss on the Ship called the *Vreede*, Capt. *Gerrit Cornelis Ranes*, on his Voyage from *Smirna* to *Amsterdam*, and of the extraordinary Charges occasioned thereby, to be proportioned in a general Average on the Ship and Cargo.

N^o. A.

According to a Declaration made the 4 *Febr.* 1749 before *Jan Barels*, Notary, and attested before the Honourable the Burgomasters of this City, by *John Berg*, Mate *Erasmus Christians*, Carpenter, and others, it appears, that the Ship was loaden at *Smirna* with new Fruit, and departed with the same in good Order and Condition the 23 *Sept.* 1748, but they afterwards met with hard Gales of Wind and rough Seas, both in the Channel of *Malta* and near the Island of *Sardinia*, and likewise on the *Moorish Coast* and on the *Coast* of *St. Peter's Island*.
The

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XXVI.

The 14 and 15 of *December* they went through the *English* Channel, and between the 15 and 16 of the same Month being got on the *Dutch* Coast, they were again overtaken by a Storm on the Height of *Kampers Duyn*, which continued with such Violence that on the 19th they were not able to keep out at Sea any longer; and not meeting with any Pilot Boats out at Sea, they were obliged to run the Ship a-shore; but the Rails and the Tafferel being beat to Pieces by the Violence of the Sea, the Ship's Crew were so overpowered and fatigued by being exposed thereto, that not a Man of them could keep upon Deck. That nevertheless they let go their Sheet Anchor to try to keep the Ship off the lower Shore, but the same parting in the Evening, they thereupon let go their small Bower Anchor and Cable to the same Purpose, but that parted likewise by the Violence of the Weather. Whereupon the Wind luckily coming about to the North, they cut both their Cables, and went to Sea again, and having got a Pilot on board the 20 ditto they brought the Ship into the *Texel*.

That having, as aforefaid, lost their Anchors and Cables, and for the Preservation of the Ship run her on the South-Coast, where being a-ground, the Pilot *Meyer Thennis Skilling* came with his Ship to their Assistance, which they accepted of (and likewise others), that by the Help of this Pilot, tho' they had got from the *Texel* an other small Bower and Sheet Anchor and Cables a-board, yet finding them very bad and not in a fit Condition to venture to set the Ship a-floating, there were two other Anchors and Cables sent from this Town by a Sloop belonging to *Jan Shouten* which Sloop being lost in the *Texel*, the Anchors and Cables were nevertheless saved and carried a-board by the People who saved them, with which they had worked the Ship from the Shore, and had brought her into deep Water the 18 *January*, after which they arrived at this Town the 25 ditto.

*The Loss and extraordinary Charges occasioned as above
are (among others) the following:*

It appears by the Report of *Houthuys* and *Durtsbach*, that the Computation of the above Loss has been inspected by them, viz.

Qq 2

By

CASE
XXVI.
N°. B.

By the Loss first of the Sheet Anchor and afterwards of the small Bower Anchor, which had been let go for the Preservation of the Ship, Cargo and People's Lives, to endeavour to work the Ship off the Shore, and the Cables belonging to the said Anchors, having been cut and parted amounting to

Fl. 1037

Charges of the Estimate - -

25

To the Attorney *Milius*, for Petition andSummons, as *per* Account - -

7 : 11

Fl. 1069 : 11

N°. C.

To *Dirk Jonker*, Pilot, for himself and others who saved the Ship, when she was a-ground and brought her into deep Water, for their Trouble and Assistance, allowed them by Decree - -

Fl. 588

To other Assistants - -

16 : 17

To $\frac{1}{2}$ Pilotage - -

30 : 8

635 : 5

N°. D.

In consequence of the Account of the said Pilot, *M. T. Shellinger*, in saving the Ship and Cargo (among other Things) paid:

An Act of the first Lighter

Fl. : 12

Postage - -

: 6

The Hire of two Anchors and one Cable - -

90

To the Inspectors of the Dyke

4 : 15

Freight to carry Goods a-board

7 : 6

Interest for his Money -

10

Dr. *Eckborst* for Visits and Boathire

11 : 10

124 : 9

N°. E.

To Salvage of the above two Anchors and Cables sent from this Town to the *Texel*, which on the Sloop's being cast away were saved by other People, and carried a-board the Ship on the South Coast, paid as *per* Receipt -

234 : 13

To

Cases of Insurances.

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Brought over Fl. 2063 : 18

CASE
XXVI.
Nº. F.

To Lighterage, Freight and Demorage, as *per*
Receipt, for taking Goods out of the Ship
to lighten her, in order to bring her off the
South Shore.

To Jan Kaan - Fl. 68 : 10
Jan Jans Elyn - 119

187 : 10

To Claas Visser for the Hire of two Pieces of
Cable for the Use of the Ship, while she was
on the South Shore, as *per* Receipt -

Nº. G.

35

To Dirk Cornelis extraordinary Pilo-
tage - - -

Fl. 30

24

Deduct for failing up -

6

To Monthly Wages of Ten of the Ship's Crew
for 28 Days, being the Time they were on
the South Coast, at 222 Fl. *per* Month, as
per Note - - -

Nº. H.

201 : 4

To Board-Wages for them and the Pilot, a
6 Stivers *per* Day, is - -

84

To the Notary Barel, for the Declaration -

11 : 16

Nº. I.

To Jan Sheltes, for Conferences and his Trouble
as *per* Account - - -

Nº. K.

55

To Abraham Milius, for the making up, con-
tinuing and discharging this with the Seal

36

Fl. 2698 : 8

Actum, Amsterdam, the 4 June, 1749.

M. and Sons,

Owners of the Ship commanded by

Gerd Cornelisens.

Inspected

CASE

XXVI.

N^o. L.

Inspected by the Commissioners of the Company of Assurances and Averages of the City of *Amsterdam*, a Declaration before the Notary *Jan Barels* made the 4th of *February*, (repeating all what has above been related by Messrs. *M.*) and an Account as above, signed by Messrs. *M.* as Owners of the before-mentioned Ship, containing the Particulars of the Loss and the Charges which have been occasioned and sustained thereby, and since paid, amounting in the Whole to the Sum of

Fl. 2703 : 19

Which *M.* and Sons therefore desire may be proportioned by a Form of a general Average on the Ships and Cargo.

The Freighters producing to this Purpose their Declaration, containing the Quality, Quantity and Value of the Goods together, with a Valuation of the Ship as follows :

<i>M.</i> and Sons	239 Casks and 257 Boxes Figs damaged at Fl. 2560, admitted by the Commissaries for	-	Fl. 2550
Ditto	450 Casks Raisins, likewise damaged, at Fl. 8950	ditto	8950
Ditto	272 Casks Figs, at Fl. 1390,	ditto	1400
<i>Jan. Tremaux</i> for <i>H. C.</i>	769 Boxes Figs, at Fl. 2018	ditto	2025
Ditto	<i>I.</i> and <i>A. F. D.</i> 2 Packs Goats Hair, at Fl. 400	ditto	400
<i>Arachiel di Paulo,</i>	Goods	-	Fl. 250 ditto 250
The above Ship	is valued at Fl. 2200	ditto	2300
			Fl. 17875

N^o. M. In Order therefore to settle this general Average, the Commissaries have examined the Articles in the Account of the Loss and Charges, and adjusted the same in the Sum of Fl. 2128 : 4, having admitted of no more than 500 Fl. for the Article of Fl. 1037, and 12 Fl. 10 *Stiv.* for that of Fl. 25.

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The general Average settled as above, is *Fl.* 2128 : 4 :

To be added thereto, *viz.*

For the Privilege of the Commissaries	17 : 17 :
To the Secretary for the Valuation of the Ship	8 : 8 :
For registering - - - - -	6 :
For the Messenger of the Company	3 : 12 :
For the Seal - - - - -	7 : 8 :
For the Poor - - - - -	6 :
For the settling for the Poor -	5 : 15 : 4
	<i>Fl.</i> 2171 : 16 : 4

The Commissaries find that the above *Fl.* 2171 : 16 : 4, when proportioned upon 17875 *Fl.* every Hundred is to bear *Fl.* 12 : 3.

In Consequence whereof the Commissaries condemn the following Freighters to pay the beforementioned Damage and Charges to the Captain as follows :

M. and Sons	of <i>Fl.</i> 2550	Paid <i>Fl.</i> 309 : 16 : 8
Ditto -	8950	1087 : 8 : 8
Ditto -	1400	170 : 2 :
J. Tremaux -	2025	246 : : 12
Ditto - -	400	48 : 12 :
Arachiel di Paulo -	250	30 : 7 : 8
The Captain for the Ship	2300	279 : 9 :
		<i>Fl.</i> 2171 : 16 : 4

Given by the abovementioned Commissaries,
the 8th July, 1749.

A N N O.

A N N O T A T I O N S.

In the foregoing general Average settled at *Amsterdam* it may be remarked ;

N°. N.

That the Gentlemen Commissaries have deducted from the Value of sundry Articles in the Account delivered to them by the Owners, without giving any Reason for so doing : From some a few Guilders less, and from others more ; others again they leave as they were, and reduce all to even Sums, though in general they have altered but little of the two following real Accounts of *M* ; nor will we take upon us to determine whether *Jean Pierre Ricard*, a late Merchant, in his Book *Le Negoce d'Amsterdam* (Editione mea 1722. Page. 282) is in the right or not, where he says ; “ Que bien souvent les uns ou les autres sont lésés par le reglement que font Messieurs les Commissaires des Avaries car quoiqu'ils diminuent les Articles qu'ils trouvent passés trop hauts, à leur gré & selon qu'il leur plait, il n'est pas possible, qu'ils puissent savoir la véritable valeur de beaucoup de Choses que les Marchands ne passent que suivant leur Intérêt.” But it is hardly to be conceived that in such a Chamber or Court of Judicature composed of Men of Ability and good Accomptants, and where undoubtedly proper Registers have been kept from its first Institution to this Time, of all Regulations of Averages, and other Transactions settled and determined therein, there should be any Deficiency in Point of Judgment : And therefore we think a greater Regard ought to be paid to their Decisions than to those of private Persons, who have not the latter of those Advantages. However, that the present Regulation might have remained intirely free from Exception, it would have been proper, and indeed ought to have been insisted on, that the following Observations should be cleared up.

N°. O.

First, In regard to the Sum of 8 Fl. 8 Stivers, charged in the Account as paid to the Secretary for the Valuation of the Ship at 2300 Fl. it might have been asked, who made that Valuation ? Since that does not appear by the Documents sent, and the Secretary could not be deemed a proper Person to do it himself.

Secondly,

Secondly, By the Valuation given in of the Ship, nothing is mentioned about the Freight. And though *Verwer*, in his Treatise of the *Neederlandse Zeeregtten* (*Editio mea de An. 1711*, p. 111.) declares that it is still the Custom in *Amsterdam*, as well as in the Northern Parts of *Holland*, sometimes to make the Ship contribute to the general Average for the true Value of the Ship, and at other Times for the whole Freight: It is said (Art. vi. *Placart van Phil. II. ter Kiese & Optie van den Koopman*) "De Waerde vanden Scheepe ofte die geheele besprooken Vragt;" and consequently it cannot mean the neat Freight. And in the present Case it ought to have been enquired into at least, whether the Freight of the Goods on board this Ship did not amount to more than *Fl. 2300*, which is what the Ship is valued at. For on inspecting the following Account Sales rendered by *M. and Sons*, it appears that the Freight only of their 450 Casks of Raisins and 342 Boxes of Figs amounts to *Fl. 2986 : 6 Stiv.* in two Articles, viz. *Fl. 2097*, and *Fl. 889 6 Stiv.* Now suppose this Insurance had been made in two different Policies; the one on the Ship, and the other on the Freight; (for it is permitted to do both, by the new Regulation made at *Amsterdam 1744*, Art. vii. and xv.) Would it have been reasonable that the Underwriters on the first Policy should bear the Whole of the general Average; and those of the other contribute nothing towards it?

And notwithstanding it may be requisite to leave general Averages to the Decision of the Commissaries, on Account of the Variety and Mutability of the Circumstances thereof, (as taken Notice of in the new Regulation, Art. 2.) we would at the same Time recommend it to them to establish the Right between Underwriters and the Parties insured with more Certainty, and on a more solid Foundation. N^o. Q.

This Act of Adjustment was delivered to the *L. A. C.*, for their Examination, together with an Account of the Particulars of the general Average, according whereto a Demand was made for the Sums insured by them, viz. N^o. S.

CASE
XXVI.

Per £. 500 St. upon the Ship to contribute thereto 12 Fl. 3
 Stiv. per Cent. on 2300 Fl. is Fl. 279 : 9 current at
 11 Fl. - - - - - £. 25 : 8 : 11
 Per £. 1000 St. on Goods which cost 7272 $\frac{1}{11}$
 Liv. Dollar valued at $2\frac{1}{4}d.$ St. per L. Dol.
 General Average and Particulars on
 Raifins - - - £. 190 : 2 : -
 Ditto - - - Ditto on
 Figs - - - 44 : 2 : -
 ----- 234 : 2 : 2
 £. 259 : 10 : 2

N^o. T.

But inasmuch as Mess. M. and Sons had demanded nothing more than the general Average upon the Hull of the Ship, [though it admitted of a Query whether they had not a Right to demand as a particular Average, Part of the Fl. 537 which had been abated them in the Value of the Anchors and Cables lost, and had been appraised at Fl. 1037; for notwithstanding the known Ordinance, which says that the Materials of the Ship must be applied to their proper Uses, as Occasions require; and that the Insurers are not answerable for the Waste or Wear and Tear thereof; yet in some particular Cases there ought to be a Consideration: As for Instance, where a Master runs his Ship a-shore, and afterwards sees a Probability of saving her, by putting in Practice some more than common Diligence; though at the same Time it were in his own Option, and he would be justified whether he used that uncommon Diligence or not; such particular Services, and Exertions of Duty (as the judicious *Quintin van Weitzzen* has long since observed) however they may not come under the Denomination, or be considered as general Averages, deserve to be as particularly rewarded, and ought by all Means to be encouraged by the Insurers] The L. A. C. therefore would not give the Insured the Trouble to search or send Abroad for any further Explanations, but were content to settle it in the following Manner:

Account

Cases of Insurances.

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CASE
XXVI.
N°. U.

Amsterdam, 1749.

Account of Sales of 50 large and 400 small Casks of Smyrna
Raifins out of the Ship De Vreede.

228 Casks found Raifins B^{ts}. 52994 lb. to several
Gwt. 2 per Cent. 1062 N.B. 4 lb. Difference on
Account of Fractions.

lb. 51932
Tare 14 per Cent. 7271

lb. 44661 at 13 Fl. Fl. 5805 : 9 :

171 small Casks } damaged B^{ts}. 124304
50 large ditto }
1 Missing Gwt. 2 per Cent. 2486

450 lb. 121818
Tare 14 per Cent. 17055

lb. 104763 fold

from 11 $\frac{1}{4}$ to 12 $\frac{1}{4}$ Fl. 6965 : 2 :

Fl. 12770 : 11 :

Prompt Payment 1 per Cent. Fl. 127 : 14 :

Commission 1 per Cent. 126 : 8

254 : 2 :

Fl. 12516 : 9 :

CHARGES.

Freight per 959 Cantars at 30

Dol. per 35 Fl. 2097 :

Average and Levant 10 per cent. 209 : 14

Postage, &c. 12

Convoy of 110000 lb. a 4 per
cent. per 100 lb. 220 :

Delivering 104304 lb. a 1 per
cent. 104 : 6

Passport, &c. 12 : 10

R r 2

Unload-

*Cases of Insurances.*CASE
XXVI.Unloading and opening, a 4 *Stiv.**per small, and 8 Stiv. per large*

Casks - 170 :

Delivering *lb.* 104304, a 1 *Fl.* *per**Mill.* - 124 : 6Weighing *per* Ditto, a 1 *Fl.* 4*Stiv.* and registering at $\frac{1}{2}$ *Stiv.**per small and $\frac{3}{4}$ Stiv. per large*

Casks - 161 : 2

Charges for Petitions and Duty 69 : 13

Alms of 6820 *Fl.* a $1\frac{1}{2}$ *per Cent.* 102 : 6

Cooperage, &c. - 45 :

Warehouse Rent - 12 :

Brokerage, a 5 *St.* *per small, and*10 *St.* *per large Casks* 125 :Commiffion of *Fl.* 12516 : 9 a 2*per Cent.* - 250 : 7

3715 : 4Neat *Fl.* 8801 : 5

M. and Sons.

Amsterdam, 1749.

N^o. W. *Account of Sales of 239 Casks* } *Figs out of the Vreede.*
257 Boxes }

165 Casks } found Figs to diverse, weigh-

177 Ditto } ing Bto. grofs - 35762 *lb.*Trett 250 *per* 4 *lb.* *lb.* 1000

92 a 2 184

118434578 *lb.*14 *per Cent.* Tare 4841

lb. 29737 soldfrom $9\frac{1}{2}$ to 11 *Fl.* -*Fl.* 2977 : 19 : 8

92 Boxes

Cases of Insurances.

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CASE
XXVI.

92 Boxes } damaged, in public Auction
62 Casks }

gross B^{co}. 16640 lb.

Trett 9 St. a 2 lb. 18

145 4 580

598

lb. 16042

14 per Cent. Tare 2245

lb. 13797 fold

from 8 $\frac{1}{2}$ to 10 Fl. per 100 lb.

1228 : 10 :

Fl. 4206 : 9 : 8

42 : 1 : 8

Deduct 1 per Cent. Gwt.

Fl. 4164 : 8

1 per Cent. prompt Payment

41 : 13

Fl. 4122 : 15

CHARGES.

Freight of 415 Cantner a 30

Dol. per 35 Fl. 889 : 6

Premium and Levant 10 per

Cent. - 88 : 18

Postage - 5 : 12

Fl. 983 : 16

Convoy 47000 a 5s.

per 100 lb. Fl. 117 : 10

Premium 3400 Fl.

a 1 per Cent. 34 :

Passport - 6 : 8

Fl. 157 : 18

Unloading and opening a 3 St.

per Piece - 74 : 8

Delivering 52402 lb. a 1 Fl. per

1000 lb. - 52 : 8

Weigh-

*Cases of Insurances.*CASE
XXIV.

Weighing Ditto a 1 Fl. 4 per	
1000 lb. a $\frac{1}{2}$ St. per Piece	76 : 11
Request and Charges	12 : 6
Alms 1200 Fl. a $\frac{1}{2}$ per Cent.	18
Warehouse Room, Cooperage,	
&c.	42 : 18
Brokerage a 2 St. per Box, and	
3 St. per Cask	61 : 11
Commiffion of Fl. 4122 : 15 a 2	
per Cent.	82 : 9
	1561 : 14
Neat	Fl. 2561 : 1

M. and Sons.

N^o. X. *Account of Sea Damage on the 450 Casks Raisins, weighing together 104763 lb. neat, according to Declarations upon Oath of two Brokers, if not damaged would have been sold at 13 Fl.*

Fl. 13619 : 4
Deduct 1 per Cent. 136 : 4

Fl. 13483 :
Deduct 1 per Cent. 134 : 17

Fl. 13348 : 3
And now are sold for 12516 : 9

is Loss Fl. 831 : 14

Extraordinary Charges by the public
Auction

Fl. 69 : 13
102 : 6

General Average on 8950 Fl. a $12\frac{3}{4}$ per Cent. 1087 : 8

Fl. 2091 : 1

At 11 Fl. is as above £. 190 : 2

M. and Sons.

Account

Cases of Insurances.

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CASE
XXVI.

Account of the Damage on the Figs of the
165 Casks } weighing together N^o. 43534 lb. if not damaged
177 Boxes } would have been sold according to Declaration on
Oath at 10 Fl. per 100 lb. - Fl. 4353 : 4
Deduct 1 per Cent. 43 : 11

Fl. 4309 : 13

Deduct 1 per Cent. 43 : 2

Fl. 4266 : 15

And now are sold for 4122 : 15

is Loss Fl. 144

Extraordinary Charges at the public
Auction Fl. 12 : 6

18

30 : 6

General Average on Fl. 2550, at 12 $\frac{1}{2}$ per
Cent. 309 : 16

Fl. 484 : 2

At 11 Fl. as above £. 44 : : 2

M. and Sons.

Whereon the L. A. C. farther observed, that as the Fruit was N^o. Y.
for Messrs. M. and Sons own Account, properly no Commission
should have been deducted; consequently that 250 Fl. 7 for
Commission being added to the 8801 Fl. 5, makes neat

Fl. 9051 : 12

And to the 2561 : 1 add 82 Fl. 9 is neat 2643 : 10

Damage on the Raisins - 831 : 14

Ditto on Figs - 144

The whole Value that is to bear the Average Fl. 12670 : 16

12670

322

CASE
XXVI.*Cases of Insurances.*

12670 Fl. 16, a 11 Fl. is Sterling £. 1151: 17: 11.

Therefore if £. 1151: 17: 11 loose £. 234: 2: 2, what shall £. 980? The Answer being £. 199: 2: 11, is what the L. A. C^o. would have to pay on the Policy of £. 1000 on Goods insured by them.

For according to the Invoice, which amounts to 775 $\frac{1}{2}$ Lw. Dr. valued at 2 $\frac{1}{2}$ s. in the Policy, and is Sterl. £. 1065: 16: 7
And adding thereto the Premium of 3 $\frac{1}{2}$ per Cent. 39: 9: 5

Makes £. 1105: 6:

And in order to cover this Interest entirely, the Sum of £. 1127: 15, to pay 98 per Cent. might have been insured; which £. 1127: 15 being less than the Value before-mentioned at Amsterdam of £. 1151: 17: 11, it would have been but reasonable to have proportioned the Average upon the last-mentioned Sum. But yet as perhaps they might have had other People concerned with them, and consequently Part of the Commission might be admitted, the L. A. C^o. agreed (instead of £. 199: 2: 11) for general and particular Average upon the Raisins and Figs to pay - £. 207: 11

N^o. Z.

And upon the Ship for £. 500, general
Average £. 25: 8, to pay 98 per
Cent. is - - - 24: 18

£. 232: 9

Deduct $\frac{1}{2}$ per Cent. prompt 1: 3

£. 231: 6

CASE

C A S E XXVII.

A general Average for Charges of reclaiming a Cargo of Sugars detained in England, regulated at Hamburgh, and a particular Average upon the Sugars settled at London.

IT appears by an Attestation made the 22d of May before the Deputies of the Admiralty of this Place, that on Desire of Capt. *John Peter Clavir*, personally appeared his Mate, *Michael Eggers*, *Jeronimus Marcus*, Boatwain, *Henry Schmidt*, Carpenter, *Jacob Hapke*, Cook, *Jacob von Bergen*, *Jodum Mahler*, *Burger Pietersz*, *Andrew Meyer*, and *John Adam Sommer*, Sailors; who made the following Depositions on Oath. The first six said to be true, that as they the said Deponents, on the 22d of December last, in their tight and well provided Ship called *Commerce*, of which the said *John Peter Clavir* was Master, lay at Anchor in the Harbour of *Nantes*, laden with Sugars, a great Storm, by which the Sea went over the Ship, obliged them to let go another Anchor; but the Storm increasing, the had broke. On the 23d ditto they had again got a great deal of Water in the Ship and Boat, the first of which they discovered by Pumping; so that not only the Boat sunk, but the were also washed away, which obliged them to cut their Cables.

On the 4th of January of this present Year they sailed from thence. On the 23d ditto they had met with an *English* Privateer who took from them two Casks of Sugar and then left them. On the 24th ditto another *English* Privateer had come on board of them, and taken away one Cask of Sugar. On the 25th another *English* Privateer came up with them, who carried them into *Dover*. That five of the Crew had left the Ship at *Dover*, in whose Place the Master had taken the three last Deponents. In laying at *Dover* on the 11th of February they had found the Ship leaky, that they had had four Feet Water in the Hold, when after four Hours pumping they had found

CASE
XXVII.

the Water sweetened by the Sugar and the Ship half a Foot lighter. And although the Master and these Deponents did their Utmost to unload the Cargo, they could not finish it before the 3 *April*, when the Ship was already declared free; and after they had unloaded her, they had found 42 Casks of Sugar wet and partly melted away, wherefore they had an Order of their Correspondent there, to fill up the said 42 Casks, to which they used 18 Casks, and thus there remained only 24 full Casks. On the 26 ditto the Master had engaged the before mentioned three Deponents, which said three last Deponents together with all the others on their Oath further declared, that on the 16 ditto having taken their Cargo on board again, they the said Deponents sailed on the 30 ditto from *Dover* and proceeded on their Voyage, that on the 4 *May* they discovered *Helgeland*, and having got an *Helgeland* Pilot on board, arrived the same Day in the *Elbe*, and on the 11 ditto, by the Assistance of two Lighters and the People that were in them, before this City.

The said Deponents further declare, that having unloaded the Cargo there appeared great Damage on the same, which could only be ascribed to the Ship's springing a-leak, which had been occasioned by the Quantity of Sea-Water that she made, as mentioned before: The Ship by their Sailing was tight and strong, the Hatches, Masts and Pumps well conditioned, and the Cargo securely stowed by proper People; that the said Deponents had not imbezzled, stolen, sold or divided among them, nor conveyed from on Board any Thing of the Cargo, which had neither been done, to their Knowledge, by the two Boys, that had been left on board, as the Whole is contained at large in the beforementioned Attestation, which is here annexed, marked A. The said Ship and Cargo has been reclaimed by Mr. S. B. of *London*, and his Accounts and other Papers having been delivered up to me, I have adjusted the Average as follows:

Accounts

Cases of Insurances.

325

Account of the Capital.

CASE
XXVII.

Mess. I. L. D. and I. B.

129 Casks brown Sugar } neat lb. 374517. Mk. 88000
250 ¹/₄ ditto white Sugar }
The Ship Commerce and the neat Freight - 8000

Mk. 96000

Account of the General Average.

The Privateer the *Duke of Dorset*, Capt. *John Hunt's* Law-suit Charges, which the Reclaimants engaged to satisfy, amount as per Account B. to - - - £. 53 : 5

N^o. B.

The Account of Charges paid by the Privateer's Agent, as separately noted in the Account B. consists, viz.

To *John Edwards*, for his Attendance - - - £. 1 : 11 : 6

To *Richard Collins*, for a Journey to *London* with the Ship's Papers - - - 3 : 3

To *Matthew Norris*, for Piloting the Ship into the Harbour - - - 1 : 1

To the Commissioners, &c. for the Examination - - - 9 : 3

To *Joseph Glandfield*, for a Dinner and Drink, &c. - - - 3 : 7 : 9

To *Andr. Read*, for a Watch on the Ship, from 18 Jan. to the 19 inst. 61 Days, at 1 s. 6 d. - - - 4 : 11 : 6

To Postage, &c. - - - 10

To the Crew of the *Duke of Dorset*, for their Trouble in pumping the Ship and preventing the Damage on the Goods - - - 3 : 7 : 3

26 : 15

S s 2

The

CASE
XXVII.
N^o. C.

The Law-suit's Charges on the Reclaimants
Part to reclaim the Ship and Cargo, as per
Particulars in the Account C.

48 : 6 : 10

*Out of Mr. S. B's Account D, dated the
3 May.*

For Mr. J. B's Affidavit got from *Bath*, to
convince the Agents of his being half
concerned in the Cargo, and that he and
Mr. D. were originally concerned toge-
ther, and other Queries £. 4 : 16 : 8

For Postage - - - 4 : 10 : 6

N^o. D.

For Commiffion for reclaiming
the Cargo - - - 63

For £. 190 Insurance on the
Charges - - - 4 : 19 : 6

77 : 6 : 8

*Out of Mr. S. B's Account, dated London the
the 3 May, marked E. as follows :*

At Dover.

To *John Knowles*, for the Permission of
landing the Cargo and Port Dues at *Dover*
and *Rye* at 3 d. per Tun £. 3 : 15 : 6

To the Notary *Will. Lambe*,
for 3 Protefts - - - 2 : 2 : 6

To *Edward Nile*, for keep-
ing off the Water, for three
Tides, in order to get the
Ship to the Keys - - - 19 : 6

To Cap. *Clavier*, paid by
him to some *Dutch* Sai-
lors, who assisted in un-
loading and loading the
Ship - - - 8 : 2 : 8

To Porters, for housing the
Sugars, opening and in-
specting into the Casks,

filling

Cases of Insurances.

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filling up the damaged ones, and taking them all out of the Work-houses again	-	-	18 : 18 : 4
To Edward Worthington, Cooper, and his Men, for 16 Days Labour and Hoops and Nails used	-	-	6 : 13
To Cartage of the Sugars from the Keys to the Ware-house, and back again	-	-	11 : 10 : 8
To Ware-house Rent for the whole Cargo	-	-	6 : 6
To Lighterage from and on board, 140 Tuns, a 16 d.	-	-	9 : 6 : 8
To John Knowles, for the Permission of shipping the Sugars again	-	-	5
To the Surveyors and other Custom-house Officers for Fees landing and shipping the Cargo	-	-	5 : 5
To John Atkins and Andr. Read, for 16 Days Attendance by Order of the Collector	-	-	3 : 10
For the Ship's laying at the Key three Months, at 2 s. 6 d. per Week.	-	-	1 : 10
To Will. Lambe, for Attestations and looking after the Sugars	-	-	2 : 3 : 8
For several petty Expences with the Officers and Surveyors, and Postage	-	-	1 : 1
To Cash paid Capt. Clavier for the Use of the Ship Commerce, which I do	-	-	

not

CASE
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not charge here, but as
per following Account the
same must be born by the
Owners, M^{rs}. H. and B.

To Mr. Minet at Dover, for
the Permission of unload-
ing and loading the Ship,
their Attendance and
other Services -

15 : 15

For Commission of reclaim-
ing the Ship, supplying the
Captain with Money, and
corresponding with the
same -

26 : 5

For £. 210 Insurance on the
Charges -

5 : 9 : 6

122 : 19

£. 328 : 12 : 6

at 35 s. per £. Sterl. Mks. 4313 : 3

N^o. E. Out of Capt. Johann Peter Clavier's Account F.
as follows :

For Lighterage of 160 Tuns, as per Ac-
count G. -

£. 12 : 13 : 11

To the Harbour Master for
Harbour Dues -

4

To take down the Sails -

8

For the Copy of a Protest -

5 : 6

To open the Sluices -

19 : 6

For a Journey to Folkstone

9 : 3

To the Pilots who got the
Ship out of the Dock and
carried her to Sea -

2 : 12 : 6

To the Captain's Board-
wages, 96 Days, a 2s. 6d.

12

For ditto of fix of the Crew,
96 Days, a 1 s. is £. 28 : 16
of which only 10 d. a Day
are allowed, is -

24

For

Cases of Insurances.

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For five Men, who assisted
at the Unloading and
Loading, 12 Days, and
were boarded during that
Time, a 1 s. per Day, of
which only 10 d. a Day
are admitted, is

2 : 10

£. 55 : 2 : 8

a 35 s.

730 : 3

As per Verdict of the Elder Captains of the
20 May of this present Year, marked H, the
Half [a] of the Monthly Wages has been allowed to
the following Men for the Time they were de-
tained in England, which according to Messrs.
H. and V. B. Account, marked I. for 3 Months
amounts, viz.

To the Mate, a 50 Mk. per

Month, is per $\frac{1}{2}$ Mk. 75

To the Carpenter, a 50 Mk.

ditto - - - 75

To the Boatswain, a 33 Mk.

ditto - - - 49 : 8

To the Cook, a 33 Mk. ditto 49 : 8

To two Sailors, a 21 Mk.

ditto - - - 63

To the Capt. Clavier, a 100 Mk.

ditto - - - 150

Mks. 462

at 116 per Cent.

398 : 5

To the Helgeland Pilot, for bringing the

Ship into the River, as per Receipt K.

Mks. 126

Deduct for usual Pilotage

90

Mks. 36

[a] As the Elders allowed to the Seamen but half of their Wages during the Detention, it shews they were remiss in doing their Duty in unloading the Ship, being leaky; the Captain whereof was obliged to hire five Men for Assistance, as appears by this Account, and it seems the Elders therefore inflicted upon the Seamen the just Punishment, of losing half their Wages.

For

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XXVII.

For the Loss arisen by cutting
the Cable in the Harbour
of *Nantes*, which has been
estimated by the Elder Rope-
makers, as *per* Certificate,
marked K, with the Ex-
pences attending this Esti-
mate - - -

230

For the Crew's Deposition be-
fore this Admiralty - -

6 : 4

To notify the Average - -

8

For two Lighters, to bring up
the Ship, Mk. 12, is not
allowed.

Mks. 272 : 12a 116 *per Cent.* - -

235 : 4

For adjusting this Average - -

140

To gather the necessary Papers, and for fe-
veral Errands - - -

3

To the Poor - - -

1

B°. Mks. 5820

Repartition.

N°. G.

These Mks. 5820 B°. divided on the Capital of Mks. 96000 B°. is for every 100 Mks. - Mks. 6 : 1 s. B°. to be paid by the following :

Mr. *I. L. D.* and Mr. *I. B.* on Mks. 88000 - Mks. 5335

The Ship *Commerce* with the
neat Freight on - -

8000 -

485

Mks. 96000 - Mks. 5820

The Original three Protests, which were respectively made
by Capt. *John Peter Clavier* and his People, and by himself,
before *Will. Lambe*, Notary Public, at *Dover*, concerning the
Detention of the Ship, the Leak she sprung, and the Plundering
of

Cases of Insurances.

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of the Cargo by the Privateers, are also annexed to this Dispatch; In Witness whereof I the authorised Dispatcheur, to whom the Adjusting of all Assurance and Average Affairs are referred, have signed this with my own Hand, and sealed it outwardly, *Hamburg*, the 5 July 1748.

CASE
XXVII.

JOHN WILLIAM SCHAFFSHAUSEN.

I declare, that this Translation agrees in every Particular with the true original Dispatch of a general Average made up and settled here by Mr. *John William Schaffshausen*, appointed Dispatcheur by the Admiralty of this Place, Witness my Hand and Seal. *Hamburg*, the 18 October 1748. new Stile.

JOHN ADAM WALTHER,

Clerk of the Chancery of the City of *Hamburg*,
and Notary Public.

Account of Damage on 111 Casks of Sugar, which were reduced N°. H.
at Dover to 93 Casks (18 having been used to fill up) being
Part of a Cargo of 379 Casks, and $\frac{1+2}{4}$ Casks in the Ship
Commerce, Capt. John Peter Clavier, shipt by Mess. L. F--s
of Nantes, for Account of Mr. I. L. D. and Mr. I. B. Mer-
chants of Hamburg, which said 111 Casks damaged Sugars
weighed at Nantes, as per Certificat annexed:

120031 lb. Brutta.

1800 $1\frac{1}{2}$ per Cent. Difference of the Nantes to Hamburg
Weight.

121831 lb.

1218 1 per Cent. good Weight.

120613 lb.

21710 Tare 18 per Cent.

98903 lb. If not damaged would have been worth, as valued
by sworn Brokers a $9\frac{3}{4}$ per lb. Mks. 30134 : 8
13 Months discount $8\frac{1}{2}$ on 108 $\frac{1}{2}$ 2403 : 6

B°. Mks. 27731 : 2
The

Vol. I.

T t

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XXVII.

The aforesaid 111 Casks of damaged Sugar reduced at *Dover* to 93 Casks, were publickly sold in Presence of *J. A.W.* Notary Public, and of the two sworn Brokers *H.H.S.* and *F.N.* as follows:

Lot I. 5 Casks weighed 5789 lb. Bruto

Good Weight 1 }
per cent. } 1191
Tare 20 per cent. }

Neat 4538 lb. a $7\frac{1}{4}$ d. Mks. 1081: 5
 $8\frac{2}{3}$ per cent. Dif. 86: 4

Mks. 995: 1

Lot II. 5 Ditto 5631 lb. Bto.

Good Weight 1 }
per cent. } 1171
Tare 20 per cent. }

Neat 4460 lb. a $8\frac{1}{8}$ d. Mk. 1158: 9
 $8\frac{2}{3}$ per cent. Dif. 92: 6

1066: 3

Lot III. 5 Ditto 5808 lb.

Good Weight 1 }
per cent. } 1208
Tare 20 per cent. }

Neat 4600 lb. a $7\frac{3}{4}$ d. Mks. 1114: 1
 $8\frac{2}{3}$ per cent. Dif. 88: 13

1025: 4

Lot IV. 5 Ditto 5270 lb.

Good Weight 1 }
per cent. } 1096
Tare 20 per cent. }

Neat 4174 lb. a $8\frac{1}{4}$ d. Mks. 1059: 13
 $8\frac{2}{3}$ per cent. Dif. 84: 8

975: 5

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Lot V. 5 Ditto 5471 lb.
Good Weight 1 }
per cent. } 1138
Tare 20 per cent. }

Neat 4333 lb. a $8\frac{1}{4}$ d. Mks. 1100: 3
 $8\frac{1}{4}$ per cent. Dif. 87: 12

1012: 7

Lot VI. 5 Ditto 6069 lb.
Good Weight 1 }
per cent. } 1263
Tare 20 per cent. }

Neat 4806 lb. a $7\frac{1}{2}$ d. Mks. 1145: 3
 $8\frac{1}{4}$ per cent. Dif. 91: 5

1053: 14

Lot VII. 5 Ditto 6093 lb.
Good Weight 1 }
per cent. } 1267
Tare 20 per cent. }

Neat 4826 lb. a $7\frac{1}{2}$ d. Mks. 1187: 10
 $8\frac{1}{4}$ per cent. Dif. 94: 11

1092: 15

Lot VIII. 5 Ditto 6433 lb.
Good Weight 1 }
per cent. } 1338
Tare 20 per cent. }

Neat 5095 lb. a $8\frac{1}{4}$ d. Mks. 1333: 7
 $8\frac{1}{4}$ per cent. Dif. 106: 6

1227: 1

T t 2

Lot

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Lot IX. 5 Ditto 5588 lb.

Good Weight 1	}	1162
per cent.		
Tare 20 per cent.		

Neat 4462 lb. a $8\frac{1}{2}$ d. Mks. 1175:10
 $8\frac{1}{2}$ per cent. Dif. 93:12

1081:14

Lot X. 5 Ditto 5260 lb.

Good Weight 1	}	1094
per cent.		
Tare 20 per cent.		

Neat 4166 lb. a $7\frac{1}{2}$ d. Mk. 1017:1
 $8\frac{1}{2}$ per cent. Dif. 81:2

935:15

Lot XI. 5 Ditto 4928 lb.

Good Weight 1	}	1233
per cent.		
Tare 20 per cent.		

Neat 4695 lb. a 8 d. Mks. 1173:12
 $8\frac{1}{2}$ per cent. Dif. 93:10

1080:2

Lot XII. 5 Ditto 6005 lb.

Good Weight 1	}	1249
per cent.		
Tare 20 per cent.		

Neat 4756 lb. a $8\frac{1}{2}$ d. Mk. 1235:7
 $8\frac{1}{2}$ per cent. Dif. 98:9

1136:14

Lot

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CASE
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Lot XIII. 5 Ditto 5841 lb.

Good Weight 1 }
per cent. } 1215
Tare 20 per cent. }

Neat 4626 lb. a 7 $\frac{1}{2}$ d. Mks. 1138: 7
8 $\frac{3}{4}$ per cent. Dif. 90: 12

1074: 11

Lot XIV. 5 Ditto 5264 lb.

Good Weight 1 }
per cent. } 1095
Tare 20 per cent. }

Neat 4169 lb. a 8 $\frac{1}{2}$ d. Mks. 1066: 11
8 $\frac{3}{4}$ per cent. Dif. 85: 1

981: 10

Lot XV. 5 Ditto 5218 lb.

Good Weight 1 }
per cent. } 1085
Tare 20 per cent. }

Neat 4133 lb. a 8 $\frac{1}{2}$ d. Mks. 1049: 6
8 $\frac{3}{4}$ per cent. Dif. 83: 10

965: 12

Lot XVI. 5 Ditto 5678 lb.

Good Weight 1 }
per cent. } 1181
Tare 20 per cent. }

Neat 4497 lb. a 8 $\frac{1}{2}$ d. Mks. 1168: 3
8 $\frac{3}{4}$ per cent. Dif. 93: 3

1075:

Lot

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XXVII. Lot XVII. 4 Ditto 4588 lb.

Good Weight 1 }
 per cent. } 954
 Tare 20 per cent. }

Neat 3634 lb. a $8\frac{1}{4}$ d. Mks. 922: 11 $8\frac{1}{4}$ per cent. Dif. 73: 9

849: 2

Lot XVIII. 5 Ditto 5509 lb.

Good Weight 1 }
 per cent. } 1146
 Tare 20 per cent. }

Neat 4363 lb. a $8\frac{1}{4}$ d. Mk. 1116: 5 $8\frac{1}{4}$ per cent. Dif. 89: 5

1027: 5

Lot XIX. 4 Ditto 3646 lb.

Good Weight 1 }
 per cent. } 758
 Tare 20 per cent. }

Neat 2888 lb. a $8\frac{1}{4}$ d. Mks. 733: 4 $8\frac{1}{4}$ per cent. Dif. 58: 8

674: 12

Banco Mks. 19304: 3

Deduct usual Discount in public Sales for
 prompt Payment 1 per cent.

193: 1

Banco Mks. 19111: 2

Extra-

Cases of Insurances.

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Extraordinary Charges by the Auction, viz.

Brokerage of 93 Casks a 1 Mk. per Cask	-	Mks. 93
To the House of Correction $\frac{1}{2}$ per Cent. Banco	-	96 : 8
Cooperage	Current	Mks. 40 : 8
To publish the Sale in the Papers and at Change	-	5 : 4
To the Notary who assisted at the Sale	-	6
To the same for drawing the Certificate	-	4 : 8
For attesting the Certificate of the Brokers	-	4 : 8
For translating the Protest of the Captain	-	3 : 3
For translating the Dispatch of the general Average, and attesting the Weights	-	8 : 12
		Mks. 262
Deduct Agio of Mks. 165 : 8 current, a 116 per cent.	-	22 : 13
		239 : 3

Neat Proceeds Banco Mks. 18871 : 15

The Amount of the said 93 Casks Sugar is as per Valuation of the sworn Brokers Banco Mks. 27731 : 2 N^o. I.

And the neat Proceeds, after Deduction of the extraordinary Charges of the Sale - - - 18871 : 15

The Loss is Banco Mks. 8859 : 3

To

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To which must be added the Charges of un-
loading and re-loading the Ship, as also other
Charges, as may be seen in the Account E
annexed, which Charges do not concern the
reclaiming £. 91 : 4 : 6 at 35 s.

1198 : 1

The whole Loss is Banco Mks. 10057 : 4

The whole Cargo of Sugars amounts as
per Invoice to £. 167480 : 10 : 4 a
174 per cent.

Banco Mks. 96253 : 4

And thus the Average amounts to 10 $\frac{1}{2}$ per cent. which is on
£. 6000 insured at London, or £. 10 : 8 : 9 d. per £. 100
£. 626 : 5

J. L. D.

J. B.

The Average adjusted at *Hamburg* is
Postage and two Certificates from *Dover*
Three Casks taken away by the *English*
Privateers, a Certificate whereof is
hereunto annexed

£. 626 : 5
1 : 2N^o. K.

65

£. 692 : 7

N^o. L.

THIS Day the 18th of October, 1748, New Stile, appeared
before me J. A. W. Clerk in the Chancery of the Republic
and City of *Hamburg*, *Cæsarea autoritate Notario Publico im-*
matriculato & jurato, Mr. J. L. D. and Mr. J. B. Merchants of
Hamburg, who upon their Word and Honour declared the fol-
lowing to be true, viz.

That the Number of 93 Casks of Sugar, which are contained
in the annexed Account of Sales, and of the 18 Casks which
were partly used to fill up the said 93 Casks, is extracted toge-
ther with the *French* Weight, from the original Invoice dated
St. Malo, the 3d of *December* 1747, which was produced to
me as follows, viz.

N^o.

Cases of Insurances.

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N°.564	lb. 1137	N°.590	lb. 1210	N°.652	lb. 1207	N°.664	lb. 1012	N°.633	lb. 971	N°.581	lb. 1011
565	956	591	1232	644	1112	665	1239	635	1106	583	963
566	1194	593	882	645	1014	667	1179	636	1370	595	777
567	1123	597	949	646	1188	668	1195	637	1187	596	1067
569	1184	598	865	647	1254	669	990	638	958	601	843
570	1248	599	1372	648	1190	670	775	679	1031	610	1142
571	943	600	1148	649	1123	671	1055	680	1085	619	942
572	971	603	1103	650	1293	672	973	681	894	629	970
573	960	604	1198	651	1307	673	1168	682	984	642	886
575	870	605	1069	653	1223	674	1136	683	928	666	1248
576	909	606	936	654	1234	675	1145	684	1201	687	974
578	1142	608	1050	655	1041	676	1179	685	973		
580	1234	611	1044	656	1185	677	1092	686	987		
582	923	612	807	657	741	678	1075	689	995		
584	1273	613	1017	658	1322	617	1008	691	1043		
585	1345	615	1046	659	1142	618	1192	563	526		
586	1348	616	1232	660	1254	622	1035	568	927		
587	1151	639	1338	661	1227	628	1299	574	1202		
588	1119	641	1061	662	1119	631	927	577	1020		
589	971	643	1150	663	1206	632	1083	579	894		
20	lb. 22001	20	lb. 21709	20	lb. 23482	20	lb. 21757	20	lb. 20246		

Calks 11 lb. 120031

Calks 11 lb. 10836

U =

And

CASE
XXVII.

And as an authentic Document was required of the foregoing Declaration, I signed and sealed this to serve where Occasion shall require. Done in *Hamburg*, *Die & Anno ut supra*,

In veritatis Testimonium

(L.S.)

JO. ADAM WALTHER,

*Scriba Cancellariæ Reipublicæ atque
Civitatis Hamburgensis & Nota-
rius Publicus.*

(L.S.)

N°. M.

Invoice of 129 Casks brown } Sugars which we caused to
250 and 149 Q^r. ditto white }
be bought at *Nantes*, and shipped in the Ship *Commerce* of *Hamburg*, Capt. *John Peter Clavier*, by Order, for Account and Risk, and to the Consignation of Mr. *J. L. D.* and Mr. *J. B. Burghers* and Inhabitants of *Hamburg*.

The said Goods are marked and numbered as *per* Margin, and weighed as follows :

Casks

Casks, Brutto, Tare, Ib., Netto, f. S. d., f. S. d., Casks,

129 Q. Casks brown Sugar, N. 563 a 691 of Mr. Villeshout, 129 - 137589 - 17 per Cent. 23390 - 114199 a l. 34 : 10 - 39398 : 13 : 1

51 Casks and 35 Q. white Sugar, N. 94 a 144 and 120 a 154, of M^{rs}. Ochs and Schweighauser.

34 - 18808 - 13 per Cent. 2445 - 16363 a l. 45 - 7363 : 7
17 - 18572 - 13 per Cent. 2414 - 16148 a l. 46 : 5 - 7473 : 1 : 6
15 - 3865 - 15 per Cent. 580 - 3285 a l. 46 : 5 - 1519 : 6 : 2
20 - 4545 - 15 p. C. & 45. 720 - 3825 a l. 45 - 1721 : 5

18076 : 19 : 8

19 Casks ditto N. 145 a 163 of Mr. Deurbroey.

19 - 17191 - 13 p. C. & 25. 2260 - 14931 a l. 45 - 6718 : 19 :

69 Casks and 14 Q. ditto N. 164 a 232 and 155 a 168 of Mr. Luker.

28 - 30682 - 13 per Cent. 4239 - 26443 a l. 46 - 12163 : 15 : 7

& 250 lb.
Refaction
d'avarie.

1 - 1182 - 13 per Cent. 154 - 1028 } a l. 48
6 - 1325 - 15 per Cent. 199 - 1126 }
40 - 41802 - 13 per Cent. }
& 500 Re-
faction 5934 - 35868 } a l. 50
8 - 1833 - 15 per Cent. 275 - 1158 }
18713
31910 : 13 : 11

Cases of Insurances.

Cases of Insurances.

Casks, Brutto,	Tare	lb	Netto	£.	s.	d.
8 Casks and 15 Q ^{rs} . ditto N. 233 a 240 and 169 a 183 of Mr. Lory.						
8 -	-	7029	- 13 per Cent.			
			& 40	954	-	6075
15 -	3391	- 15 per Cent.	509	-	-	2882
						a l. 50
						4478 : 10
101 Casks and 85 Q ^{rs} . ditto N. 241 to 341 and 184 to 268 of Mr. Villesboinet.						
61 -	-	69713	- 13 per Cent.			
			& 150	9213	-	60500
						a l. 50
83 -	19962	- 15 per Cent.	2994	-	-	16968
						a l. 52
40 -	-	47077	- 13 per Cent.			
			& 50	6170	-	40907
						a l. 52
2 -	497	- 15 per Cent.	75	-	21491	: 1 : 7
						60564 : 8 : 9
2 Casks ditto N. 342 and 343 of Mess. De la Lande.						
1 -	-	1032	- 13 per Cent.	134	-	898
						a l. 50
1 -	-	1242	- 13 per Cent.	161	-	1081
						a l. 52
						583 : 14 : 9
						1032 : 14 : 9
379	149	427337	lb.			£. 162180 : 19 : 2

CHARGES.

Cases of Insurances.

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CHARGES.

Weigh Money by the Reception of
364517 lb. a 5 s. per Cent.

£. 91 : 2 : 7

Cooperage of 379 Casks and

149 Qⁿ. a 3 of the last per 1

Cask, are 428½ Casks a 30 s. 643

Lighterage of 427337 lb.

Brutto per Tun of 2000 lb.

are 213½ Tuns a 20 s.

319 : 15

Ditto to fetch 51 Casks and

35 Qⁿ. of Mess. Ochs and C^o.

are 62½ Casks a 3 s.

9 : 8

Ditto to fetch 114 Casks and

85 Qⁿ. of Mr. Villesboinet, are

142½ Casks, a 3 s.

21 : 7

Warehouse Rent of 51 Casks and

35 Qⁿ. of Mess. Ochs and C^o.

114 Casks and 85 Qⁿ. of Mr. Vil-

lesboinet, are 205 Casks, a 4 s. 41

Stowing in the Ship 379

Casks, a 2 s. 6 d.

47 : 7 : 6

Ditto - 149 Qⁿ. ditto

a 1 s. 6 d.

11 : 3 : 6

For an Oath taken before

the Admiralty, a Certifi-

catet hereof and Copy of

the same

7 : 6

1191 : 4 : 1

Commission at Nantes, 1½ per Cent.

£. 163372 : 3 : 3

2450 : 11 : 7

Commission of our Direction, 1 per Cent.

£. 165822 : 14 : 10

1658 : 4 : 6

£. 167480 : 19 : 4

For

Case
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For which we charge

On Mr. J. L. D-'s Account for his $\frac{1}{2}$ £. 83740 : 9 : 8

On Mr. J. B-'s Account for his $\frac{1}{2}$ 83740 : 9 : 8

£. 167480 : 19 : 4

a 174 per Cent.

B^a Mks. 96253 : 4

St. Malo, the 3 Dec. 1747.

DE LA LANDE MAGON, Freres.

N^o. N.

The L. A. C^o's Exceptions.

AS this general Average adjusted at *Hamburg*, had been inspected into by the L. A. C^o. the following Remarks occurred thereon:

- 1) That the Cargo, consisting of 129 Casks brown }
250 and 149 Q^{rs}. ditto white } Sugars
neat 374517 lb. had been put down for an even Sum of
Mks. 88000, and the Ship *Commerce*, together with her
neat Freight, for an even Sum of Mks. 8000. To admit
it thus abroad, it should appear by Particulars from whence
those Sums proceeded; and as the Weight of the Sugars
shipt, was in *France* neat 364517 lb. and is here men-
tioned to be 374517 lb. the same seemed to be a Mistake;
however in this Adjustment we had properly no Business
with the *French* Weight shipt off, but only with the
Weight received and delivered at *Hamburg*, in which a
Deficiency of 16802 lb. was found; and as very likely
the *Hamburg* Value of all the Sugars could not be well
ascertained to the Dispatcheur, so it seems a Value guessed
at was adopted, in which he may have judged equitably
enough; but such Conjectures, without seeing Deeds, can-
not at all Times be approved of abroad.
- 2) That in Law it is not quite made out yet in *England*,
that Men's Wages and Victuals, by such Detentions, are
to be admitted into the general Average; but that the
Custom

Cases of Insurances.

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Custom rather is, for the Owners of the Ship to bear them [a].

CASE
XXVII.

However as we made it in our Policy an express Condition, to be entirely free of all Charges of Detention and Reclaiming, (which make the greatest Part of this general Average) we thus only ought to answer for the Cables cut

Mks. 378 : 5

the Charges of unloading and reloading the Cargo,

£. 91 : 4 : 2 351. - 1198 : 1

being together

Mks. 1576 : 6

It was approved, the same should be reparted as general Average on the Value of the 96000 Mks. given up at Hamburg, which is Mks. 1 : 10 per Cent. and thus

On Mks. 88000, a Mks. 1 : 10 per Cent. it would be

Mks. 1430

But for particular Average on the Cargo

Mks. 8859 : 3

We thought we had Reason to deduct at least 6 per Cent. on Mks. 27731 : 1 on Account of the 1 per Cent. for prompt Payment, 5 per Cent. Diminution in the Weight, and Profit, &c. in the Price of 9 $\frac{1}{4}$ d.

1663 : 10

7195 : 9

Mks. 8625 : 9

£. 657 : 4

[a] It has been judged equitable also in England, that the Men's Wages, and Victuals, during such Detentions, should be born by the Assurers, vide Essay, § 57. pag. 69.

Reckoned:

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Reckoned on £. 167480 : 19 : 4, a 174 per

Cent.

Mks. 96253 : 9

a 35 s.

£. 7333 : 11

Assurance £. 7801 : 13, a 4 per Cent.

312 : 1

on

£. 7645 : 12

Instead of $10\frac{1}{2}$ per Cent. demanded from *Hamburg*, it cannot amount to more than $8\frac{1}{3}$ per Cent. and thus we should have to pay.

On £. 6000, a 98 per Cent. £. 5880, a $8\frac{1}{3}$ per Cent.

£. 505 : 13 : 7

N^o. O.

Reply in Favour of the Assureds.

I have three Objections against the Adjustment of the Average on the Ship Commerce,

- 1) You deduct the 1 per Cent. which was allowed at *Hamburg* by the Sale of the damaged Sugars for prompt Payment; But this is a usual Discount on damaged Goods sold there publicly, and every Body knows that, be the Discount ever so much or ever so little, the same is compensated in the Price.
- 2) You deduct 5 per Cent. for ordinary Diminution, probably because you imagine the Weights of the Casks to have been taken out of the Invoice before they were shipped from the *West-Indies*, when a Diminution may very naturally happen: But the Weight is taken from what they produced in *France* after they had been landed, in order to be shipped off for *Hamburg*, and after they had already suffered the Diminution from the *West-Indies*. Therefore it cannot be supposed, that these Sugars should lose 5 per Cent. more in the Voyage from *France* to *Hamburg*, and I think, that, with the Addition of $1\frac{1}{3}$ per Cent. to the
Number

Number of *French* Pounds, you have the Weight, which the Casks should yield at *Hamburg*.

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- 3) You add the Premium of 4 *per Cent.* to the Value of the Cargo: In this Case that should not at all take Place, but if you chuse to make up the Account thus, they should at the same Time be added to the Loss. To explain which I will suppose,

A. and *B.* ship 800 Ounces of Silver, and have it insured at 4 *per Cent.* to receive 98 *per Cent.* The Value of this Silver is 5 s. for an Ounce. If the Ship is lost, *A.* receives for £. 400, a 98 *per Cent.* - £. 392
and *B.* the same - - - 392

£. 784

Suppose that of this Silver, during the Voyage, $\frac{1}{4}$ had been diminished, and the whole Parcel so reduced as only to produce $\frac{3}{4}$, that is an Average or Loss, what ever it is called, of 25 *per Cent.* and *A.* in Case of a total Loss, would recover 100 *per Cent.* less 2 *per Cent.* or in other Words, if *A.* by a Loss of £. 400, has a Right to recover 392 £. so by the Loss of a quarter Part of £. 400, he is entitled to $\frac{1}{4}$ of 392, or 98 £. That is understood of itself and requires no Demonstration.

Let us now see if your Way to adjust this Average will produce 98 *per Cent.* If it does not, it will be wrong. Suppose the Loss to be as above 25 *per Cent.* on 800 £. - £. 200

The Cargo as above - - - £. 800

The Premium of 4 *per Cent.* added 32

£. 832

To know what is to be received you say:

If £. 832 lose £. 200, £. 100 will lose £. 24: : $9\frac{1}{4}$ d. *A.* is insured for £. 400, which at 98 *per Cent.* are £. 392, and these at £. 24: : $9\frac{1}{4}$ d. are £. 94: 4: 6; but *A.* should receive 98 £. therefore I conclude this Way to be erroneous.

*Cases of Insurances.**Per Contra.*

Suppose the Loss to be as above	-	l. 200
The Premium of 4 per Cent. added	-	8
		l. 208
The Cargo and Premium as above	l. 832	

To know what is to be recovered I say :

If l. 832 lose l. 208, l. 100 lose 25 per Cent. *A.* is insured for l. 400, which at 98 per Cent. are l. 392, and these at 25 per Cent. are l. 98, the just Sum which *A.* is entitled to recover.

I flatter myself, that I considered this Affair impartially ; however, if I should be in the wrong, I shall be glad to be better informed.

To
Messrs. G. and G.

B.

N^o. P.

Duplicate for the L. A. C^o.

ON Mr. B's Remarks on the Adjustment of the Average of the Sugars in the Ship *Commerce* is to be observed :

- 1) That the Reason to deduct 1 per Cent. of the Price of $9\frac{3}{4}d.$ for which according to the Broker's Declaration the Sugars would have been sold, if not damaged, is, that that perhaps was the Market Price by some private Sales ; But it is known, that for such private Sales the Buyers do not pay till two or three Months after, and this it is thought was done sooner by this public Sale ; and if we are to make good the Loss against the Market Price of $9\frac{3}{4}d.$ this Discount, or this 1 per Cent. which was left out on Account of the different Prompt for Payment, must either be deducted on none or both the Accounts, or it must be proved, that there is no Difference in the Time of Payment.
- 2) That the deducting of 5 per Cent. was not only on Account of the Deficiency of Weight, which generally occurs by

by brown Sugars, and that thereby it is not yet sufficiently proved, that 100 lb. *French Weight* make $101\frac{1}{2}$ lb. in *Hamburg*. CASE XXVII.

But Mr. B. is in the Right to say, that this alone cannot make any material Difference, and even by the *£c.* of our Account it was intended to intimate more, and by Word of Mouth it was also hinted to Mr. G. that, if we were to contribute according to the Market Price of $9\frac{1}{2}d.$ it was but just we should inquire, whether in that Price any Profit was comprehended or not?

It must not be thought, that we by this intended to deprive them of their Profit, but our View is to let them bear their Share of the Loss for what they were uninsured; and therefore I reckoned these 120031 lb. Sugars

Deduct 17 per Ct. 26405 Tare

99626 lb. in *France* cost at 34 £. 10 s.

£. 34370 : 19

$3\frac{1}{2}$ per Cent. Charges and Commission

1202 : 19

£. 35573 : 18

a 174 per Cent.

Mks. 20444 : 12

Assurance 21750 Mks. a 4 per Cent.

870

Mks. 21314 : 12

Which, if not damaged, it is likely would have produced Mks. 27731

I reckoned for Freight, Duty and Charges at *Hamburg*

7 per Cent. - - 1941

25790 :

Remains for Profit

Mks. 4476 : 12

For which Profit of Mks. 4476 : 12 the Owners ought to bear their Share, as Mr. B. himself on further Consideration will find it, and he may refer his Friends to the *Hamburg* Assurance Laws, Tit. XXI. Art. 14. where it is said: "When a particular

N°. Q.

X x 2

" particular

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" particular Average happens, and the Policy is not valued, the
 " Average shall be adjusted according to what the Goods with
 " Charges a-board did cost, as *per Invoice*, with the Premium,
 " and what they fetched by their Sale, and if it should be
 " found, that by a public Sale they fetched more than they
 " cost, the Owners are to bear their Proportion in the Average
 " for the Amount of that Profit." And thus it is computed,
 that, in order to make good on the *Mks. 25790* the *Mks. 8859*,
 which are wanting, it is on *Mks. 4476 : 12* Profit *Mks. 1539*,
 and that amounts to $5\frac{1}{2}$ *per Cent.* on *Mks. 27731 : 2*, whereas
 in the former Calculation only *5 per Cent.* are found.

Moreover it is not sufficient to pretend to a Price of $9\frac{1}{4}$ *d.* for all
 these Sugars, on a mere Declaration of Brokers; but it ought to be
 proved, that sound Sugars of the same Quality, by large Parcels
 really sold, do in an Average render $9\frac{1}{4}$ *d.* for the suffering As-
 surer is no ways obliged to pay the highest Market Price.

Nay, if even it could be proved, that 100 lb. *French Weight*
 produce fully $101\frac{1}{2}$ lb. at *Hamburg*, and the Sugars were really
 worth $9\frac{1}{4}$ *d.* ready Money, still this Average would not exceed
 $8\frac{1}{2}$ *per Cent.* It cannot be unknown to Mr. B. that others
 often insisted to pay no more than what the Owners fell short of
 the Cost and Premium, and if thus we reckon, that the Cost
 and Premium of these damaged Sugars amount to

B°. Mks. 21314 : 12

The Produce, as *per Account Sales*,
 is - *Mks. 19111 : 2*

Deduct for extraordinary Charges
Mks. 239 : 3

For Freight, Du-
 ty, &c. reckon *1530 : 13*

1770

17341 : 2

Thus there is only short upon the Whole *Mks. 3973 : 10*

Brought

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Brought over Mks. 3973 : 10
General Average - - - 1430

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Mks. 5403 : 10

a 35 s. - £. 411 : 14

which divided on £. 7645 : 12 would be $5\frac{1}{2}$ per Cent.

But I am convinced, that the first Account is the justest, and that the same may be proved by the Example produced by Mr. B.; for it appears by it, that the whole Value of the Capital is - - - £. 7333 : 11

Premium - - - 312 : 1

£. 7645 : 12

And that the Company is therein concerned for 5880 £. viz.

For Premium - - - £. 240

Capital - - - 5640

£. 5880

Whatever you call the Goods, in order to discover the Loss, No. R. two Things must be examined :

- 1) What melted away?
- 2) How much of what remained was worse in Quality?

What melted away appears, viz.

120031 lb. French Weight a $101\frac{1}{2}$ per Ct. in Hamburg

lb. 121831

For which there were only found in Hamburg - - - 105029

Loss on the Weight lb. 16802

Which on 121831 lb. is - - - $13\frac{1}{2}$ per Cent.

Brought

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Brought over

13 $\frac{7}{100}$ per Cent.

The Quality was found worse, viz.

105029 lb. found at *Hamburg*Deduct 1050 a 1 per Cent. for good
Weight.

103979 lb.

Deduct 20796 Tare, a 20 per Cent.

83183 lb. a 9 $\frac{3}{4}$ d. Mks. 25344 : 13Deduct 8 $\frac{3}{4}$ per Cent. 2021 : 5

Mks. 23323 : 8

Sold at *Hamburg* for 18871 : 15Loss on the Quality Mks. 4451 : 9 - 19 $\frac{1}{100}$ per Cent.32 $\frac{87}{100}$ per Cent.

The whole Cargo of Sugars with the Premium amounts to £. 7645 : 12, and the Amount of these damaged Sugars is with the Premium Mks. 21314 : 12, a 35 s. is £. 1623 : 19 : 7.

Thus if on £. 7645 : 12, a 32 $\frac{87}{100}$ per Cent. are to be divided, it will correspond on £. 1623 : 19 : 7 - - - 7 per Cent.

And further the general Average Mks. 1430 on £. 6645 : 12 is £. 108 $\frac{30}{100}$, and on £. 100 - - - - 1 $\frac{42}{100}$ per Cent.

Together 8 $\frac{29}{100}$ per Cent.

Whatever it is called, and it would be less in Case it should be proved, that Sugars in Quantities and of the same Quality were at that Time sold for less than 9 $\frac{3}{4}$ d. ready Money, and that the Weight of brown Sugars from *France* has produced less than 101 $\frac{1}{4}$ lb. at *Hamburg*, and that some Casks of this Parcel of brown Sugars did in Reality not suffer any Sea-Damage, on which then there would be no Allowance for Difference of Price.

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N°. S.

For further Demonstration let us suppose for Instance :
that of

100 shipt off from France, 20 were melted away, or lost, then
the Assurers, who signed to pay 98 per Cent. must make
good - - - - - 19 $\frac{1}{2}$

And suppose, that the remaining 80 all somewhat
damaged, if arrived sound, might have produced

100
Deduct 10 per cent. ordinary Charges 10

Neat 90

But now they are damaged they only pro-
duce - - - - - 50

And pay the same ordinary Charges 10
and extraordinary ditto 5

15
35

98 55

Deduct from the above - 19 $\frac{1}{2}$

Then on 90 are 55 lost, is on 78 $\frac{1}{2}$ 47 $\frac{1}{2}$

And thus for the Assurers is in the Whole lost 67 $\frac{1}{2}$

Which is the very same as saying, that for
100 if they were all arrived sound, would have been re-
ceived - - - - - 125

Deduct 10 per cent. for ordinary Expences 12 $\frac{1}{2}$

112 $\frac{1}{2}$

But now there only arrived
80, and being damaged only produced 50

Deduct Charges - 15

35
Loss 77 $\frac{1}{2}$

Thus on
112 $\frac{1}{2}$ are lost 77 $\frac{1}{2}$, and for the Assurers, as before,
on 98 - - - - - 67 $\frac{1}{2}$

And

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And if these 100, of which 20 melted away, and 80 arrived damaged, had been comprehended in a Parcel of 1000 in the whole shipped off, then the Assurers would only have paid $6\frac{7}{8}$ for their 98, whatever it is called.

N^o. T.

And thus for the £. 1623 : 19 : 7 partly melted away and partly damaged, the Division made Page 352, must be allowed to be just. However as the Difference in the Loss of Weight and of the Prices between a public and a private Sale might not perhaps be quite so much ; it was agreed that the Difference between the Demand of £. 692 : 7 made by the Assured at *Hamburg*, page 338, and the Offer of £. 505 : 13 : 7 made by the Assurers at *London*, page 346, should be split ; which was done to reciprocal Satisfaction.

C A S E XXVIII.

Shewing in what Manner the Charges on Goods saved from a Shipwreck near Cadiz, were proportioned, and what Freight was allowed thereon.

N^o. A.

ANNO 1726, when N.M. lived at *Cadiz*, a French Ship called *la Fidela*, from *Hamburg*, loaden with Bale Goods and Wood, bound for *Cadiz* and *Malaga*, run upon the Rocks lying off the *Scipiona*, where she beat to Pieces, and what Cargo she had of Wood drove out of her, and Part of the Bale Goods sunk to the Bottom : Whereupon the Governor of *Rota* immediately interposed, and made the necessary Dispositions to save what he could, and afterwards gave in the following Account of Salvage Charges :

For 150 Cart-loads which were carried in 5 Days by 5 Carts from aboard of the Barks, and from the Strands of <i>N^{ra}. S^a. de Regla</i>	Dol.	33 : 5
314 Days Labourers, a 5 R ^s . V ⁿ .	-	104 :
63 Voyages made by the Barks, a 1 Dol.	-	63 :
430 Days paid to Mariners employed in the Barks, a 4	-	115 :
Wine and Bread	-	32 :
Salaries to 12 Horsemen for 6 Days and Nights to guard the Coast	-	72 : Victual-

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Victualling 15 Men for 11 Days	120 :
Charges of Notifications and Dispositions made at <i>Cadiz</i> and <i>St. Lucar</i> to save the floating Wood	100 :
For diving	175 :
For the Governor's Trouble and Treats in all agreed for 19 Days Attendance	485 : 10
For washing the Goods saved he has disbursed	230 :
Paid in all to the Governor	<u>Dol. 1530 :</u>
	Rpt. 12240

Who thereupon, at the Request of the Concerned
in the Cargo, delivered up the Goods saved, and
the further Management of the Whole, to the
Hamburg Consul, who afterwards delivered in
the farther Account of Salvage as follows :

For the Assistance of a Notary at the Delivery of the Goods saved	64 :
A Letter of Attorney from the Concerned	48 :
Horse-hire and Chaises, backwards and for- wards from <i>Scipiona</i>	140 :
17 Cart-loads of Goods from <i>Scipiona</i> to <i>St. Lucar</i> , a 7 R.	119 :
Loading and unloading	34 :
4 Permits from the Custom-House	48 :
4 Cumplidos	16 :
Small Expences at <i>Scipiona</i>	76 :
4 Expreses sent	8 :
A Person to watch the Goods	16 :
Provisions and Expences paid at <i>Scipiona</i> for the Captains, Sailors, &c.	492 :
6 Dol. to <i>Martines's</i> Wife	48 :
The Assistance of <i>Martines</i> , Inhabitant of <i>Scipiona</i> , at the diving for the Goods saved, and delivering them out to be washed	303 $\frac{1}{2}$:
The public Cryer of the Sale	8 :

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The Notary who assisted at the Sale	-	134 :
D.L. the Consul's Commission in the Whole		
was allowed by the Concerned		2 : 400 :
The Trouble of <i>Hinsch</i> and <i>Labée</i> , who had		
been a-board of the Ship, having chartered		
the same, and took great Care of the		
Salvage	-	800 :
The Governor of <i>Rota</i> was farther allowed for		
certain Considerations, the Value of		
Goods he took to himself out of the Salv-		
vage, in the Whole	-	1 : 165 $\frac{3}{4}$
Certificate of the whole Transaction paid to the		
Notary	-	40 :

Rp. 18 : 200 :

And the Goods saved in all were found to be
and sold,

Per	4128 $\frac{1}{4}$	Rp. the Wood	} for Account of his Char- terers a-board <i>Hinsch</i> and <i>Labée</i>
	24746 $\frac{3}{4}$	the Goods	
	10824	Goods for Account of <i>De la Campe</i>	
	1245 $\frac{1}{4}$	Ditto for Account of <i>Doorman</i>	
	1402 $\frac{3}{4}$	Ditto for Account of a Person at <i>Malaga</i>	
	9144	Ditto for Account of <i>Magens</i> .	

51491 Rpt. So that the neat Salvage produced
only

33291

51497

N°. B.

And as it was left to *N. M.* to make the Repartition, he considered that inasmuch as Part of this Salvage was the Produce of Wood, the saving whereof occasioned the greatest Part of the Boat-hire and Cartage, and likewise in Respect of Freight, Wood ought to bear much more than Bale Goods. An equal Proportion upon the Value of these Articles would be unjust; he therefore separated from the above Account the Articles of Cartage

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tage and Boat-hire, amounting to 137 Dol. 5, and 100 Dol. for other Dispositions to guard and recover the floating Wood; and so in Proportion of what its Freight amounted to, he found it corresponded nearly to $\frac{2}{3}$ thereof upon the Wood separately, being CASE XXVIII.

Rp. 1267

But the remaining Part of the above 18200 *Rpt.* being *Rpt. 16932 $\frac{1}{2}$* might be born proportionably to what the Goods saved had produced in Value, and so he divided the same as follows, viz.

From the Governor's Account.

Per $\frac{1}{3}$ of 137 Dol. 5 Cartage and Labourers	-	-	<i>Rp. 367</i>
Boat-hire of the Goods	63	Dol. 504	
430 Days Mariners	115	920	
Wine and Bread	32	256	
Diving	175	1400	
Washing	230	1840	
			5287

And reparted on the Goods saved by the Governor.

N. C.

Per 9749 Rs. for <i>De la Camp</i>	<i>Rpt. 1326</i>
18568 $\frac{1}{2}$ for <i>Hinsch</i> and <i>Labée</i>	2526
1402 $\frac{1}{2}$ for a Person at <i>Malaga</i>	191
9144 for <i>N. Magens</i>	1244
	5287

From the Consul D. Lepin's Account, saved by his Care.

Per 1075 Rs. Goods for <i>De la Camp</i>	} 303 $\frac{1}{2}$ Wash- ing	<i>Rs. 38</i>
6179 for <i>Hinsch</i> and <i>Labée</i>		
1245 for <i>Doorman</i>		
8499		220 $\frac{1}{2}$
		45
		303 $\frac{1}{2}$

Y y 2

From

CASE
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From Ditto Account.

For Charges of Goods transported to St. Lucar,

Per 9441 Rs. for <i>De la</i>	
<i>Camp</i>	Cart-hire Rs. 153
22730 for <i>Hinsch</i> and	A Watchman 16
<i>Labée</i>	Permits 64
1245 for <i>Doorman</i>	Public Sale 142
9144 for <i>N. Magens</i>	
	Rs. 375

Corresponds *per De la Camp* Rs. 80 $\frac{1}{2}$ *per Hinsch and Labée* 194*per a Person at Malaga* 12*per Doorman* - 10 $\frac{1}{2}$ *per N. Magens* - 78

375*On the general Charges from the Governor's Account.**Per $\frac{1}{3}$ of 800 Rpt. at Cadix and St. Lucar Rpt.* 267

Guarding the Coast - 576

Victuals - 960

The Governor's Trouble and Charges
from the Consul's Account 3883

Notary - 64

Letters of Attorney - 48

Horse and Chaise-hire - 140

Divers Charges - 76

Victuals - 492

Ditto - 48

Expreses - 8

More allowed to the Governor 603

Hinsch and Labée's Charges 562

Certificates - 40

Commission for the Consul 2400

for *Hinsch and Labée* 800

Rp. 10967 $\frac{3}{4}$

To

To be reparted.

on	4128 $\frac{1}{4}$	Wood	} for <i>Hinsch</i>	Rpt. 6151
	18568 $\frac{3}{4}$	Goods		
	6179	ditto	} for <i>De la Camp</i>	2305
	9749	ditto		
	1075	ditto		
	1245 $\frac{1}{4}$	ditto	for <i>Doorman</i>	265
	1402 $\frac{3}{4}$	ditto	for a Person at <i>Malaga</i>	297 $\frac{1}{4}$
	9144	ditto	for <i>N. Mogens</i>	1949
				10 : 967 $\frac{3}{4}$
				Rpt. 18 : 200

Now the Question remained, what Freight ought to be allowed to the Captain for the Goods saved, and how to proportion the same?

N°. D.

Whereupon two Merchants were named as Arbitrators, who gave it as their Opinion, that the Captain should be allowed 200 Dol. in the Whole for Freight, and the same be recovered upon the Value of the beforementioned 5491 Rpt. a *rata* of each Person's Share therein: Which Opinion *N. M.* rejected as being not consistent with Justice.

For according to this Order, *N. M.* would be obliged to pay 284 Rpt. Freight for the Goods saved for his Account, amounting to 9144 Rs. Plate; whereas by the Bill of Lading it appeared, that if his Goods had arrived safe, the Freight stipulated to have been paid for the Whole, was but 18 Ducats or 198 Rpt.

N°. E.

Now as there were saved but 500 ps. of his Goods, which consisted in 4 Chests HR. N°. 1 a 4, containing 640 ps. Dimitties, so from these

Unquestionably ought to be deducted the Proportion for 140 ps.

Rpta. 198

43

Rpt. 155

And

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And then according to a most just Doctrine laid down by
Adrian Verwer, in his curious Annotations upon the Sea-Laws
of *Philip II.* pag. 137;

N°. F. " That whatever Diminution the Shipper of Goods on board
" sustained by the Shipwreck and Salvage Charges (by comput-
" ing what such Goods would have produced had they arrived
" safe) the same proportionate Diminution the Master of the
" Ship ought to bear in his Freight."

Then from the above	-	Rpt. 155
should be deducted at least $\frac{1}{4}$ for Decrease in		
Value by having been damaged, is	-	39
		<u>Rpt. 116</u>

And whereas to save these 116 Rpt. upon
9144 Rpt. it cost 3271 Rpt. Charges,
the Proportion is

So the Freight to be paid by <i>Nicolas Magens</i>		
ought to be no more than	-	Rpt. 75

And from <i>De la Camp</i> , his Bill of		
Lading being 18 Ducats	Rpt. 198	
should be deducted for 1800 Varas		
Morleses not saved	-	30

	Rpt. 168	
For diving $\frac{1}{4}$ Part of 1 Pack Tickings,		
and 528 Varas Crudos not saved		18

	Rpt. 150	
For Loss in Value $\frac{1}{4}$		37 $\frac{1}{2}$
	Rpt. 112 $\frac{1}{4}$	

For Charges of Salvage on Rpt.		
10824	3749 $\frac{1}{4}$	-
		39 $\frac{1}{4}$

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For the Person in *Malaga* 3 D. a

11 R.

$\frac{1}{2}$ Loss in Value

33

8 $\frac{1}{2}$

Rpt. 24 $\frac{1}{2}$

Charges on 1402 $\frac{1}{2}$ R. made
501, is

8 $\frac{1}{2}$

16 $\frac{1}{2}$

For *Doorman*

3 D.

Rpt. 33

$\frac{1}{2}$ Loss in Value

8 $\frac{1}{2}$

Rpt. 24 $\frac{1}{2}$

$\frac{1}{2}$ Diving

8 $\frac{1}{2}$

Rpt. 16

Charges on 1245 $\frac{1}{2}$ R. 320 is

4

12

Rpt. 176 $\frac{1}{2}$

And as the Goods saved for the Freighters,
Hinsch and *Labée*, in the Whole amount-
ed but to a little more than the above
Goods together, the Freight in Proportion
for them ought not to be above

200

And in Regard to the Wood saved for

them, its Sale amounted but to *Rpt.* 4128 $\frac{1}{2}$

And the Salvage Charges above par-
ticularized together, to

2146

Remains neat *Rpt.* 1982

Whereof at farthest a Third of its Value might
be allowed for Freight

661

So that the Arbitrators in the Whole should not
have allowed for Freight above

Rpt. 1037 $\frac{1}{2}$

And

C A S E XXX.

Proving that too much Freight was allowed on the Loading which was saved, out of a Ship which was wrecked near Marseilles.

ON the 30th of April, 1753, in the Council-Chamber at the Town-House of Marseilles. N^o. A.

WE *Lazarus de Gerin Ricard*, King's Counsellor, Lieutenant of civil and criminal Causes in the Admiralty of this City, make known, That in Consequence of a Petition to us presented by Capt. *Andrew Doets*, of the Dutch Nation, heretofore Commander of the Ship *Matthew*, the 24th of January last, against Messrs. *Gampert* and *Whatley* (to whom the Cargo of the said Ship was consigned) and the Concerned therein, Strangers as well as others, tending to a Regulation of the Charges of Salvage in Manner of an Average, and of another also presented to us by the said Messrs. *Gampert* and *Whatley* against the Concerned in the said Ship, as also the Insurers thereon, Strangers as well as others, dated the 8th of February last, towards a Regulation of the particular Average of Damages to be borne by the Hemp and Iron laden on board the said Ship, and of the Ordonnance by us issued in Consequence thereof, on the 26th of January and 19th of February, intimating that necessary Documents should be remitted to, and laid before us, within three Days, in order to proceed toward settling and adjusting the said Average. In pursuance whereof, Mr. *Lejeans*, Solicitor to the said Captain *Doets*, and M. *Monier*, Solicitor for the adverse Party, the said Messrs. *Gampert* and *Whatley* having produced each of them their respective Documents and Instruments, they were laid before us and examined; after which Perusal and Examination we find them to consist as follows, viz. Those in the Parcel of the aforesaid Captain *Doets* consist in an Abstract of a Process made by the Officers of the Admiralty

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ralty at *Arles*, touching the Shipwreck and Salvage of the
aforesaid Ship the *Matthew*, on the 15th Day of *December*
last, and other following Days. The Abstract of a Protest
made by the said Captain *Doets* before the said Officers of
the Admiralty at *Arles*, the 16th of the said Month of *De-*
cember last, Abstract of another Declaration of the said
Captain *Doets* touching the unrigging of his Ship, and the
Condition he quitted her in, where she lay stranded on the
28th of the said Month. A Petition for Sale, &c. of the
Hull and Rigging of the aforementioned Ship, presented by
the said Capt. *Doets* the 5th of the said Month of *January*
against the said Messrs. *Gampert* and *Whalley*, and the Con-
cerneds therein, and Insurers thereon, Strangers or others,
with the Certificate of the Summons copied at Foot, made by
Castagne, Huissier or Summonser, the same Day, which
was duly controlled by *Crequi*. Abstract of a Sentence or-
dering the Sale of the said Ship and Rigging of the 9th of
the said Month of *January*, with the Receipt copied at
Foot thereof on the Part of *M. Monier*, adverse Solicitor,
and the Summons made and delivered to the said Messrs.
Gampert and *Whalley*, and to the said Assurers, with Assign-
ment to them to proceed to the Sale of the Hull and Keel
of the said Ship, and of the Rigging, Tackle, &c. of the
same on the 20th of the said Month of *January*, made by
the said *Castagne* duly controlled by the said *Crequi*. The
verbal Process and Charges in the public Sale of the said Rig-
ging, &c. of the 22d of *February* last, with the Summons made
to the Bidders or Purchasers of the 23d of the said Month
by the said *Castagne* duly controlled. Another Ordinance,
enjoining the Delivery of the said Rigging, &c. in Favour
of *Maurice Giraudin* for the Sum of Livres 6600, of the 8th
of *March* last, with the Summons and Precept of Payment
at Foot, made to the said *Giraudin*, and delivered by the said
Serjeant, duly controlled by the said *Crequi*. A Summons to
plead, of the 8th of the said *March* last, with Receipt co-
pied at Foot, on the Part of *M. Monier*, adverse Solicitor.
Abstract of a Sentence importing that the Amount of the
Sale or Value of the Rigging, Tackle, &c. sold and depo-
sited in the Registry, should be delivered to the said Messrs.

Gampert

Gampert and *Whatley* on the 16th of *March* last, with a Summons or Execution of Judgment at Foot, made to *M. Merendol*, the Register, on the 17th of the said Month, by the said *Castagne*, duly controlled. A Duplicate of an Appearance laid before the Register by the aforesaid *M. Lejeans*, Solicitor for the said Capt. *Doets*, the 17th of the said *March*, on the Representation of Capt. *Dallest* relating to the Undervalue of the Rigging, &c. of the said 16th of *March*. The Petition for Regulation and Adjustment of the general and particular Average, presented by the said Capt. *Doets* the 24th of *January* last, against the said Messrs. *Gampert* and *Whatley*, as well as the Insurers and others concerned therein, as well Foreigners as others, with the Summons at Foot, made to them by the said *Castagne*, duly controlled by the said *Cregui*. Abstract of the Ordinance directing the Junction of both Motions, for the Adjustment of the Average of the 10th current, with the Receipt at Foot. On the Part of *M. Monier*, adverse Solicitor, Duplicate of a of Salvage Charges of the Ship and Cargo communicated the 12th current, as appears also by the Receipt copied at Foot on the Part of *M. Monier*, adverse Solicitor. Duplicate of an Account of Freight of 165 Bales of Hemp, communicated the said Day, with Copy of the Receipt at Foot on the Part of the said *M. Monier*. An Account of Sales of the Rigging, &c. of the aforesaid Ship the *Matthew*, and their nett Proceeds, communicated the said 21st current, as appears by the Receipt, Copy whereof at Foot, on the Part of the said Mr. *Monier*, adverse Solicitor. Inventory of the several Pieces or Documents of the said Capt. *Doets*, the 21st current, with Copy of the Receipt at Foot, on the Part of the said *Monier*, adverse Solicitor. In the Parcel of the said Messrs. *Gampert* and *Whatley*, a Summons to the Protest, made by the Persons who brought the Rigging, &c. of the said Ship *Matthew* hither, with a Sentence of Judgment thereon, made to the said Persons the 22d of *December* last, by *Castagne*, duly controlled by *Cregui*. A Petition presented against the said Persons for Recovery of the Hemp saved, the same Day, with the Sentence at Foot, delivered by the said

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XXX.

saïd *Castagne*, duly controlled by the saïd *Crequi*. Duplicate of a Presentation made in Court, by *M. Monier*, adverse Solicitor, of the saïd Messrs. *Gampert* and *Whatley*, upon the Petition for Sale of the saïd Ship, Rigging, &c. the same Day, with the Receipt at Foot on the Part of Mr. *Lejeans*, adverse Solicitor. Duplicate of another Representation laid before the Registry by the saïd *M. Monier*, Solicitor for the saïd Messrs. *Gampert* and *Whatley*, the 26th of *January* last, on the Petition for the Regulation of the Average of the saïd Capt. *Doets*. The Defence of the saïd Petition of the 23d of saïd Month, with Copy of the Receipt at Foot, on the Part of the saïd *M. Lejeans*, adverse Solicitor, of the same Day. The Petition presented by the saïd Messrs. *Gampert* and *Whatley*, the saïd 8th *February* last, against the Concerneds, or Owners of the Ship, and Insurers thereof, as well Strangers as others, in Regulation of the particular Average, with Summons at Foot, made to the saïd Concerneds and Insurers, in the Name and Person of the King's Solicitor, on the same Day, made by the saïd *Castagne*, duly controlled by the saïd *Crequi*. Abstract of an Ordinance of the several Papers and Documents produced agreeable thereto, and in the mean Time an Estimation of Damage of the Hemp, of the 9th of the saïd Month, with a summons at Foot, to proceed to the Estimation of the saïd Damages, made by the saïd Serjeant duly controlled. Abstract of a Report of the Damage sustained by the Hemp, of the 12th of *March* last, with the Summons at Foot, made to the Concerneds and Insurers on the 14th of the saïd Month, by the saïd Serjeant, duly controlled. Abstract of a Letter of Attorney, made from the saïd Messrs. *Gampert* and *Whatley*, in Favour of Mr. *Monier* their Solicitor, by Mr. *Begue*, Notary Publ. with Copy of the Receipt at Foot, on the Part of the saïd Mr. *Lejeans*, adverse Solicitor. Duplicate of a Protest, made by Capt. *Doets* before the Officers of the Admiralty at *Arles*, the 16 *December* last, communicated the 12 Instant, as appears by the Receipt copied at Foot, on the Part of the saïd Mr. *Lejeans*, adverse Solicitor. Duplicate of a Declaration, made by Capt. *Doets*, before the saïd Officers of the Admiralty at *Arles* the 22 *December*, with Copy of the Receipt at Foot, on the Part of

of Mr. *Lejeans*, adverse Solicitor, on the said Day instant. State of the Charges arising from the Salvage of the Cargo, Rigging, &c. of the Ship *Matthew*, on the said 12 of this Month, with Copy of the Receipt at Foot, on the Part of Mr. *Lejeans*, adverse Solicitor. Duplicate of an Account of Sales of 829 Bars of Iron, communicated the said Day, as appears by the Copy of the Receipt at Foot, on the Part of the said Mr. *Lejeans*, adverse Solicitor, on the same Day. Duplicate of an Account of Sales of one hundred and sixty five Bales of Hemp, with the same Receipt copied at Foot, on the Part of the said Mr. *Lejeans*, adverse Solicitor, on the said 12 Instant. An Inventory of Communication of the several original Papers and Documents of the said Mess. *Gampert* and *Whatley*, on the same Day, with the said Receipt copied at Foot, on the Part of the said Mr. *Lejeans*, adverse Solicitor. And generally, all and each of the necessary Documents to us remitted and delivered by the Solicitors of the said Parties, nothing being admitted or introduced, in Behalf of the Concerneds therein, or Insurers thereof, Strangers as well as others. The which Premises being thus laid before us, and duely examined, we proceed to the Regulation of the General and Particular Average in the following Manner :

General Average on the Ship *Matthew*, Capt. Andrew Doets, N^o. B.
a Hollander.

Loaden at Petersburg and consigned to Mess. *Gampert*
and *Whatley*.

165 Bales Hemp, which produced 1711 Bundles, and
fold as follows :

1687 Bundles, weighing 319457 lb. at Liv.

17 : 17 : 6 per $\frac{1}{2}$ amounts to

Liv. 57102 : 18 : 9

24 Bundles weight 4830

lb. at Liv. 11 : 8 : 4

per $\frac{1}{2}$ is

575 : 11 : 6

8107 lb. damaged at Liv. 5

405 : 7

Liv. 58083 : 17 : 3

To

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To be deducted	
Freight <i>Liv.</i> 12126	
Charges of	
Sale -	580 : 17 : 3
Charges of	
Salvage and	
Freight to	
this City	6146
	18852 : 17 : 3

Liv. 39231

General Average thereon

at L. 4 : 2 - -

L. 1608 : 9 : 5*Loaden and consigned as
above.*

483 Bars broad Iron, weight

29734 *lb.* at L. 11*L.* 3270 : 14 : 9

346 small ditto

weight 7867

lb. at *Liv.*12 : 10 *983 : 7 : 6*

L. 4254 : 2 : 3

To be deducted

Charges of Sal-
vage & Freight
to this City*L.* 270Charges
of Sale

43 : 2 : 3

313 : 2 : 3

Liv. 3941

3941

General Average thereon

at L. 4 : 2 *per* $\frac{1}{2}$ -*161 : 11 : 7**For*

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Brought over Liv. 43172 Liv. 1770 : 10

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For the Ship.

The Rigging, &c. sold at public Sale, the Hull being abandoned, produced nett, subtracting the Charges and a Deduction upon the Sale of the Anchors, which did not amount to the Weight in the Inventory

Liv. 5952

Charges of Salvage of the Rigging, &c. and Freight hither, which must be deducted

700

Liv. 5252

The Half of the above is to bear the general Average, and is

L. 2626

General Average thereon at L. 4 : 2 per $\frac{1}{2}$

Liv. 107 : 13 : 4

For Freight.

The Freight according to Charter Party amounts to Liv. 12372 : 11 : 9 which reduced is in Proportion as the Ship was

advanced

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XXX.

Brought over Liv. 45798

Liv. 1877 : 14 : 4

advanced in her Voyage
to L. 12126Whereof half
is to bear
the general

Average - - 6063

General Average thereon

at L. 4 : 2 per $\frac{\circ}{\circ}$ - - 248 : 11 : 8

Liv. 51861 Liv. 2126 : 6

N^o. C. Particulars of those Articles which are to be included in the
General Average.For an Express dispatched to *Marseilles* with Advice of the
Ship running on Shore - Liv. 25Paid *Francis Bras* for his Assistance to
Capt. *Doëts*, as Boatswain and Inter-
preter - - - 204 : 10For a Letter of Attorney in Favour of
Capt. *Dallest* - - - 6Paid to the Officers of the Admiralty at
Arles - - - 736 : 7 : 6Paid for Chaise-hire to carry Capt. *Dallest*
twice to *Arles* and on the Beach, and
Mr. *Bras* once and back again - 106 : 16Expences of Mr. *Dallest*, during his Jour-
ney and Stay - - - 61 : 8 : 6Paid *Schultz*, the Dutch Interpreter - 65 : 9To Capt. *Dallest* for his Trouble - 240Commission and Interest on Liv. 1205
Money advanced at 3 per Cent. - 36 : 3Wages to the Sailors from the 14 Decem-
ber to the 3 Jan. at the Rate of 492
Livres per Month - - 328

Victualling

Cases of Insurances.

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Victualling of the said Sailors, being 11 Persons, for 21 Days, make 231 Days, at 10 d. each	115 : 10
Law Charges incurred by Capt. Doets	41
Ditto of Mess. Gampert and Whatley	16 : 4 : 8
For our Trouble and Salary	102
To the Register for his Fees and Paper	34
Abstract	7 : 16 : 4
	Liv. 2126 : 6

CASE
XXX.
I. N

Agreeable to the above Account by Us settled, it appears, that the Value of the Cargo of the aforesaid Ship the *Matthew* amounts to the nett Sum of 51861 Livres, including the Half of the nett Proceeds of the Rigging, Tackle of the said Ship, and of the Freight. Upon the which Sum we have divided that of 2126 Livres 6 Sols amount of the Salvage Charges of the Cargo of the said Ship and the Rigging, &c. as aforesaid, including our Salary and other Law Charges. And we find, that the General Average, of which this is Part, amounts to Livres 4 and Sols 2 for every hundred Livres, as is above adjusted; whereof the Consignee of the said Cargo, and the Concerned therein, Foreigners as well as others, each for their Share, are hereby enjoined Payment in 8 Days without Bail. To the Original dated as above, We have signed

GERIN RICARD.

Particular Average on one hundred and sixty five Bales of Hemp, laden on board the *Matthew*, Capt. Andrew Doets.

N°. D.

To the Consignment of Mess. Gampert and Whatley.

The said Hemp cost, as paid for in London £. 1850 : 10 Sterl. which at 32 Pence Farthing per Crown of 3 Livres make - £. 41318

Particular Average thereon

£. 21 : 8 : 6 per Liv. 100. £. 8852 : 7 : 7

*Cases of Insurances.**Articles included in the Particular Average.*

Paid *Antoine Jannas* for bringing hither the Goods, which he saved from the Wreck - - - **Liv. 400**

Honoré Marques - - - **400**

Felix Catelin - - - **400**

Laurens Billet - - - **400**

Langlade - - - **400**

Valentine Cely - - - **400**

Vincent Granier - - - **400**

Mourat - - - **332**

Louis Roustan - - - **90**

James Fabreque - - - **360**

John Fabreque - - - **360**

Matthew Imbert - - - **330**

John Joseph Pons - - - **400**

Joseph Amiel - - - **294**

Honoré Marques, for a second Voyage **400**

John Valentine - - - **420**

Honoré Lequel - - - **360**

Liv. 6146

Commission and Interest on the Money paid to the above Persons being Liv.

6146, at 3 per Cent. - - - **184 : 7 : 7**

Liv. 6330 : 7 : 7

For Damage by Salt-Water on 6000 lb. of Hemp, settled by Persons appointed to be Judges thereof, at Liv. 13 per 100 lb. - - - **780**

For the Share the Hemp bears in the general Average - - - **1608 : 9 : 5**

To the Person who judged the Damage and Extract of his Proceedings - - - **14 : 17 : 5**

Charges on the Delivery of the Hemp - - - **31 : 9 : 6**

Law

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Law Charges in Regulating the Average	28
For our Trouble and Salary - - -	42
To the Register for extra Duty and	
Paper - - - - -	14
Abstract - - - - -	3 : 3 : 8

CASE
XXX.

Liv. 8852 : 7 : 7

Agreeable to the above Account it appears, that the Value of the Hemp, laden on board the *Matthew*, to the Confinement of Messrs. *Gampert* and *Whatley*, amounts to the Sum of Livres 41318, upon which Sum we have divided that of 8852 Livres 7 Sols and 7 Deniers, Amount of the Salvage Charges to be born by the said Hemp, including our Salary and other Law Charges, and we find, that the Particular Average amounts to 21 Livres 8 Sols and 6 Deniers for every hundred Livres, as is above adjusted; whereof the Insurers of the said Hemp, as well Foreigners as others, each for their Share, are hereby enjoined Payment within 8 Days, without Bail. To the Original dated as above. We have signed

GERIN RICARD.

Particular Average upon the Iron brought by the *Matthew*,
Capt. Andrew Doets, to the Confinement of Mess. Gam-
pert and Whatley, amounting as per Invoice to

N^o. F.

Liv. 3925

Particular Average, at Liv. 12 : 3
per Cent. - - -

Liv. 476 : 17 : 9

Articles to be included in the Particular Average.

or the Share the Iron bears in the General Average

Liv. 161 : 11 : 7

Paid *John Riviere*, for bringing the Iron
from the Wreck hither and getting it
out of the Ship - - -

270

A a a 2

Interest

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Interest and Commission on the above	
Sum, a 3 per Cent.	7 : 2
Law Charges	19 : 15 : 2
For our Trouble and Salary	13
To the Register extra Fees and Paper	4 : 9
Abstract	1

Liv. 476 : 17 : 9

Agreeable to the above Account by us settled, it appears, that the Value of the Iron brought by the *Matthew*, to the Con-
signment of Mess. *Gampert* and *Whatley*, amounts to the Sum
of 3925 *Livres*, upon which Sum we have divided 476 *Livres*
17 *Sols* and 9 *Deniers*, amount of the Salvage Charges of the
said Iron, including our Salary and other Law Charges. And
we find, that the Particular Average thereof amounts to 12
Livres and 3 *Sols* for every hundred *Livres*, as is above adjusted ;
whereof the Insurers thereof, as well Strangers, as others, each
for their Share, are hereby enjoined Payment, within 8 Days,
without Bail. To the Original dated as above. We have
signed.

GERIN RICARD.

N^o. G. *We now proceed directly to settle what regards the Rigging,
Tackle, &c. saved, the Hull being abandoned.*

The Rigging, Tackle, &c. being sold at public Sale, produced
Liv. 6600

From which deduct

Allowance made for the Anchors not an-
swering the Weight specified in the In-
voice, and Charges thereon

Liv. 347 : 6 : 8

Carriage to the Warehouse 69 : 3 : 6

Warehouse Rent paid at

Linesy - 126

Commission on L. 6252 : 3 : 4

at 2 per Cent. - 125 : 1

Charges

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375

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XXX.

Charges of publick Sale,
Duty for Deposit, Ac-
quittance and Contrall 300 : 14 : 6

Charges of putting up at
the publick Sale, for the
Sale, and Suit with the
Buyers about the Al-
lowance for the An-
chors - - 70 : 13 : 4

Freight of the Rigging, &c.
from the Wreck to Mar-
seilles - - 700

For our Trouble - - 12

To the Register - - 4

Abstract - - 1 : 1

1756

Liv. 4844

Agreeable to the above Account the nett Proceed of the
abovesaid Rigging, Tackle, &c. of the said Ship *Matthew*,
amounts to 4844 *Livres*, as we have adjusted it, which we
have ordered to be laid before the Court, and all the Documents
and Papers delivered us, as also our present Sentence and Deter-
mination. To the Original dated as above, We have signed

GERIN RICARD.

PIGNATEL.

WE LAZARUS DE GERIN RICARD, King's Counsellor,
Lieutenant in civil and criminal Causes in the Admiralty
of this City, certify and attest to whom it may concern, that
Mr. PIGNATEL, who has signed the above Abstract, is Re-
gister to the said Court, to whose Handwriting Credit is given,
as well in all Things judicial, as otherwise. In Witness whereof
We have signed these Presents, and hereunto affixed the com-
mon Seal of this Admiralty. Given at *Marseilles*, the 15th of
May 1753.

(L. S.)

GERIN RICARD.

REMARKS.

*Cases of Insurances.***R E M A R K S.**

N^o. H. By the preceeding Attestation it appears, that at *Marseilles* special good Care is taken, to have Facts well proved, before the Lieutenant of the Admiralty proceeds to a Regulation, and we find in the present Case a great Deal of good Judgment, but only it seems to us, that in the Article of having allowed to the Captain his full Freight, deducting merely 2 per Cent, for what was wanting in Proportion of the Voyage, the Owners of the Loading, or their Insurers, are prejudiced, for although the *French Ordonnances* say, *Tit. Freight, § XXII. Numb. 617.* "If he cannot find a Ship to carry thither the Goods preserved, he shall only be paid his Freight in Proportion to what he has performed of the Voyage." In § XXI. it says: "He shall be paid Freight for the Goods saved, he conducting them to the Place appointed." And we think the Sense of this *Ordonnance* can only be, when a Ship is lost, and that the Cargo saved out of her is sold at the same Place, where the Wreck happened, that then Freight shall be allowed in Proportion to the Voyage advanced. But it is not at all Places possible, or not so beneficial, to sell the Goods, or to end the Voyage just where they are saved; and when not, the Master of the Ship ought to carry them to the Place where he was bound for, and he is to be considered for the Freight as a Party concerned in Goods, and for so much as the Freight amounts to, he undoubtedly ought to bear an equal Proportion of the Charges of the Salvage with the Owners, as likewise his Proportion of what Damage the Goods saved had sustained, in the Manner we have stated it in the two preceeding Cases *XXVIII. XXIX.* We think, in the present Case the Account of the Freight should have been regulated as follows:

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165 Bundles of Hemp, if all
found delivered at Marseille
332394 lb. at Liv. 17:17½ s.
would have been worth
there Liv. 59415: 8: 5
and would have
paid Freight
there 12372: 14: 9

The extra Charges for the sav-
ing whereof amounts to
Liv. 6330: 7: 7
and extra Da-
mage sustain-
ed - 780

Liv. 71788: 3: 2

Liv. 7110: 7: 7

In Proportion whereto, the aforefaid Sum of Liv. 12372: 14: 9
will give Liv. 1225: 6; which Liv. 1225: 6, we think, ought
to have been deducted from the Freight instead of L. 246: 14: 9.
For suppose the whole Cargo of Hemp saved, had all been wett,
and not produced a Third of the Value of sound Hemp; and
suppose that the Expences to save it, had been four times as
much, Is it reasonable, that the Captain of the Ship should only
lose 2 per Cent. of his Freight for the Proportion of the unper-
formed Voyage? Surely this cannot be the Meaning of the
Ordonnance; and wherever *Ordonnances* want Explanations,
Courts of Judicature ought to make them, and any Regulations
under whatever Authority and Pretence of *Ordonnances*, as well
as all Customs that are against natural Equity and Reason, ought
no where to be valid.

CASE XXXI.

CASE
XXXI.

*Being an Enquiry, what Premium ought to be paid
in the several Degrees of Age?*

BY a Table, of Mr. Thomas Simpson, in his *Treatise of An-
nuities rectified after the Tables from Halley and others*,
it appears, pag. 4 and 5: That out of 1280 newborn Infants,
the Number of 410 Dies within the first Year, and that, of
the remaining 870, the Number of 170 Dies the second Year,
and so on, as is below exhibited: According to which the Pre-
mium to insure the Life of a new-born Infant for one Year
would

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would be $\frac{410 \times 100}{1280}$, or $32\frac{1}{4}\%$ per Cent. and thus the Premium for a Life of one Year old appears to be $\frac{170 \times 100}{870}$, or $19\frac{1}{2}\%$ per Cent. and so on as in the Table subjoined.

170 out of 870 of 1 Year old, in the second Year $19\frac{1}{2}\%$ per Cent.

No. A.

65	-	700	-	2	-	-	-	-	9 $\frac{1}{2}\%$
35	-	635	-	3	-	-	-	-	5 $\frac{1}{2}\%$
20	-	600	-	4	-	-	-	-	
16	-	480	-	5	-	-	-	-	
13	-	564	-	6	-	-	-	-	
10	-	551	-	7	-	-	-	-	
9	-	541	-	8	-	-	-	-	
8	-	532	-	9	-	-	-	-	
7	-	524	-	10	-	-	-	-	1 $\frac{1}{2}\%$
7	-	517	-	11	-	-	-	-	
6	-	510	-	12	-	-	-	-	
6	-	504	-	13	-	-	-	-	
6	-	498	-	14	-	-	-	-	
6	-	492	-	15	-	-	-	-	
6	-	486	-	16	-	-	-	-	
6	-	480	-	17	-	-	-	-	
6	-	474	-	18	-	-	-	-	
6	-	468	-	19	-	-	-	-	
6	-	462	-	20	-	-	-	-	1 $\frac{1}{2}\%$
7	-	455	-	21	-	-	-	-	
7	-	448	-	22	-	-	-	-	
7	-	441	-	23	-	-	-	-	
8	-	426	-	25	-	-	-	-	
8	-	418	-	26	-	-	-	-	
8	-	410	-	27	-	-	-	-	
8	-	402	-	28	-	-	-	-	
9	-	394	-	29	-	-	-	-	
9	-	385	-	30	-	-	-	-	2 $\frac{1}{2}\%$
9	-	376	-	31	-	-	-	-	

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9	-	367	-	32
9	-	358	-	33
9	-	349	-	34
9	-	340	-	35
9	-	331	-	36
9	-	322	-	37
9	-	313	-	38
10	-	340	-	39
10	-	294	-	40
10	-	284	-	41
10	-	274	-	42
9	-	264	-	43
9	-	255	-	44
9	-	246	-	45
9	-	237	-	46
8	-	228	-	47
8	-	220	-	48
8	-	212	-	49
8	-	204	-	50
8	-	196	-	51
8	-	188	-	52
8	-	180	-	53
7	-	172	-	54
7	-	165	-	55
7	-	158	-	56
7	-	151	-	57
7	-	144	-	58
7	-	137	-	59
7	-	130	-	60
6	-	123	-	61
6	-	117	-	62
6	-	111	-	63
6	-	105	-	64
6	-	99	-	65
6	-	93	-	66

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Bbb

CASE	6	-	87	-	67		
XXXI.	6	-	81	-	68		
	6	-	75	-	69		
N ^o . B.	5	-	69	-	70	-	7 $\frac{1}{2}$
	5	-	64	-	71		
	5	-	59	-	72		
	5	-	54	-	73		
	4	-	49	-	74		
	4	-	45	-	75		
	3	-	41	-	76		
	3	-	38	-	77		
	3	-	35	-	78		
	3	-	32	-	79		
	1251						
	29	remaining of 80					10 $\frac{1}{2}$

N^o. C. Thus by the above Table it appears, that the Premium of 5 per Cent. per Annum for Ages from 15 to 30 Years are much too high, but then to judge of the Risk of Persons Lives, we ought likewise to know, if their Way of Living is regular, or not? (See *Essay* § 30.)

N^o. D. But to shew in a farther Light, if insuring at those Premiums on regular People's Lives is profitable, we will suppose, that the Whole of the foregoing Number of Lives of 20 Years old, being 462, were to be insured for 10 Years following at 5 per Cent. Premium yearly, how much an Insurance Company could get by it, if £. 100 was fixed on each Life?

Then,

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XXXI.

Then the Premium to be
received would amount

Loss to be paid

For £. 45500	1st Year a 5 per cent.	£. 2275	for £. 700 a 98	£. 686	
44800	2d	-	2240	700	686
44100	3d	-	2205	700	686
43400	4th	-	2170	800	784
42600	5th	-	2130	800	784
41800	6th	-	2090	800	784
41000	7th	-	2050	800	784
40200	8th	-	2010	800	784
39400	9th	-	1970	900	882
38500	10th	-	1925	900	882

£. 21065

£. 7742

is Profit, exclusive of Interest

13323

£. 21065

B b b a

CASE

C A S E XXXII.

Shewing how soon an Estate in Reversion may be greatly incumbered by borrowing Money at Interest beforehand, and paying a Premium of Insurance for Life.

SUPPOSE a Person upon the Expectation of having an Estate of the yearly Income of £. 3000 clear after a certain Person's Death, would set himself down before-hand upon the yearly Expence of £. 1000, borrowing the Money at 5 per cent. Interest, and paying 5 per cent. Premium for his Life; then he must insure per £. 1000 for the first Year.

1138 $\frac{912}{9116}$	a 5 per cent. is	£. 56 $\frac{9144}{9116}$	and pay
Per 1056 $\frac{9144}{9116}$	a 5 per cent. Interest	52 $\frac{7748}{9116}$	
			£. 109 $\frac{9916}{9116}$.

And in case of Death the Lender receives

Per 1138 $\frac{9112}{9116}$	£. Insurance to pay	
	98 per cent. per 1000	£. 980
	Deduct $\frac{1}{2}$ per cent.	4 $\frac{1}{10}$
		£. 975 $\frac{1}{10}$

And so

if for £. 1000 in case of Death is paid 975 $\frac{1}{10}$, then for 1138 $\frac{9112}{9116}$ it is 1109 $\frac{9916}{9116}$.

Thus

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XXXII.

Thus for received

	Insurance	Premium	Cash	Interest
1st Year £.1000 he pays				
of 1138 $\frac{1}{1138}$	£.56:18	£.1056:18	£.52:17	£.109:15
2d more 1000	2401	120	2229:15	111:10 231:10
3d more 1000	3802:15	190:3	3531:8	176:12 366:15
4th more 1000	5358:3	267:18	4975:18	248:16 516:14
5th more 1000	7084:5	354:4	6578:18	328:19 687:3
6th more 1000	8999:16	450	8357:17	417:18 867:18
7th more 1000	11024:14	556:10	10332:5	516:12 1073:2

98 per cent. Spending

88192	Premium and Interest	£.3848:17
99216	in Money	7000
49		
19		£.10848:17

1080420 £.10804:4 Difference £.1:7

$\frac{1}{2}$ per cent.

54

£.10850:4

Which proceeds from not
having calculated quite
near to the Fraction.

So that at the End of seven Years, for having received only £.7000, the Estate then falling to him, would stand indebted for £.10848:17, or £.10850, and so each £.1000 received before-hand costs him £.1570.

N^o. A.

And now we will suppose upon having Land-Security to give, he raises Money at 3 per cent. and proposes to clear his Estate again of the above Sum in seven Years; then to know how much he must pay off yearly, (by Mr. Simpson's Solution)

N^o. B.

put $a = 10850$, the Sum the Estate is in Debt.

$n = 7$, the Years in which the Debt is to be paid.

$y = 3$, the Rate per cent.

$c = 100$, and $x = 103 = c + y$,

CASE
XXXII.

so shall $\frac{x^n}{x^n + c^n} \times \frac{y^a}{c}$ express the required Sum.

Thus c^n , or 100 raised to the seventh Power,

being = 100000000000000

and $x^n = 122987386542487$

$$\text{thence is } \frac{x^n}{x^n + c^n} \times \frac{y^a}{c} = \frac{122987386542487}{22987386542487} \times \frac{3 \text{ Times } 10850}{100} = 17411.$$

which is the Sum he must save, and pay off yearly to clear the Estate again in seven Years. The same Thing might have been otherwise determined, and that more expeditiously, by Help of Logarithms: For the general Expression above given being

$$= \frac{1}{1 - \frac{c}{x}} \times \frac{y^a}{c} \text{ its Logarithm will therefore be } = \text{Log. } y + \text{Log.}$$

$$a - \text{Log. } c - \text{Log. } 1 - \frac{c}{x} = 0,477121. + 4,035430 - 2 +$$

0,728391 = 3,240942; to which the Number corresponding is 1741, the same as before.

CASE

C A S E XXXIII.

IN the State-Lottery of *Amsterdam*, 1712, mentioned (*Essay*, §. 28.) the whole Number of Tickets was 30,000, of which 3800 were Prizes: *Law*, in the public Papers proposed, that if any one would give him the Numbers of ten Tickets, and pay to him 100 Guilders, he would insure them that they should not all come out Blanks; or, if they did, to repay the Possessor 300 Guilders for the 100 Guilders received. Whereupon the Question is asked, how much the Chance was in *Law*'s Favour?

N^o. A.

In order to a general Solution (by Mr. *Thomas Simpson*) put

N^o. B.

- a = the whole Number of Tickets in the Lottery.
- b = the Number of Blanks.
- n = the Number of Tickets insured.
- p = the Premium paid for insuring.
- q = the Sum to be paid if they all come out Blanks.

Then the Number of Chances, or Variations. for drawing all

Blanks being $= \frac{b}{1} \times \frac{a-1}{2} \times \frac{b-2}{3}$, &c. to n Factors, and the

whole Number of Chances or Variations is $= \frac{a}{1} \times \frac{a-1}{2} \times \frac{a-2}{3}$

&c. to n Factors, it follows,

that $q \times \frac{b \cdot b-1 \cdot b-2 \cdot \&c.}{a \cdot a-1 \cdot a-2 \cdot \&c.}$ will express the Sum paid, $a \times a$

Medium, in Consideration of the Premium received; so that the Gain by every Insurance, taken one with another, is

$= p - q \times \frac{b \cdot b-1 \cdot b-2 \cdot b-3 \cdot \&c. \text{ to } n \text{ Factors}}{a \cdot a-1 \cdot a-2 \cdot a-3 \cdot \&c. \text{ to } n \text{ Factors}}$: Which,

as both a and b are supposed to represent large Numbers, will

be $= p - q \times \frac{b^n}{a^n}$ very near. Thus, in the Case proposed, a

being $= 30000$, $b = 26200$, thence is the Logarithm of

$q \times$

CASE
XXXIII.

$$q \times \frac{b^n}{a^n} (= \text{Log. } q - n \times \text{Log. } a - \text{Log. } b) = 2,477121 -$$

$10 \times 0,058820 = 1,888921$, to which the Number corresponding is 77,42; which subtracted from 100, leaves 22,58 = the Number of Guilders gained by *Law*, upon a Medium, by every Insurance.

If it were to be demanded, how much ought on an Equality of Chance to have been paid by him in Consideration of 100 Guilders Premium, when all the Tickets insured should be drawn Blanks.

Then putting $q \times \frac{b^n}{a^n} = p$ we have $q = p \times \frac{a^n}{b^n}$ expressing the Number required; which in the Case proposed comes out $= 387 \frac{1}{2}$; and so many are the Guilders that *Law* might have afforded to pay, when all the ten Tickets proved to be Blanks, without being a Loser by the Bargain.

In the same Manner the Advantage, or Disadvantage in any other Lottery may be determined, from the general Equation above given; but the Equation will be rendered rather more commodious, if $\frac{a}{b}$ be put $= \frac{d+1}{d}$ (that is, if the Proportion of the Blanks to the Prizes be supposed as d to 1.) whereby

$$p - q \times \frac{b^n}{a^n} \text{ becomes } = p - q \times \frac{d^n}{(d+1)^n} \text{ and } p \times \frac{a^n}{b^n} = p \times \frac{(d+1)^n}{d^n}$$

from the latter following Table is calculated, exhibiting at one View, what Sum ought, upon an Equality of Chance, to be repaid for £. 100 Premium, if any given Number of Tickets (not exceeding ten) should be all drawn Blanks.

N. C.

Number

Cases of Insurances.

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XXXIII.

Number of TICKETS insured.

	1	2	3	4	5	6	7	8	9	10
3	133,3	177,8	236,9	315,8	421	561,3	748	997,2	1329	1772
4	125	156,3	195,8	244,1	305,2	382,4	476,9	596,1	745,3	931,4
5	120	144	172,8	207,4	248,9	298,6	358,4	430	516	619,3
6	116,6	136,1	158,8	185,3	216,1	252,1	294,3	343,2	400,5	467,1
7	114,3	130,6	149,3	170,6	195	222,9	254,4	291,1	332,6	380,3
8	112,5	126,5	142,4	160,3	180,3	202,8	228,3	256,6	288,8	324,8
9	111,1	123,5	137,3	152,4	169,4	188,2	209,1	232,4	258,1	286,7
10	110	121	133,1	146,4	161	177,1	194,9	214,4	235,8	259,4
11	109,1	119	129,8	141,6	154,5	168,5	183,9	200,4	218,9	239
12	108,3	117,4	127,1	137,7	149,3	161,6	175,1	189,8	205,5	222,6
13	107,7	116	124,8	134,5	144,9	156	168	180,9	194,9	209,9
14	107,1	114,7	122,9	131,6	141	151,1	161,9	173,4	185,6	198,9
15	106,6	113,9	121,4	129,5	138	147,2	157,1	167,6	178,7	190,6
16	106,2	112,9	120	127,4	135,4	143,9	152,9	162,4	172,6	183,4

Number of BLANKS to a PRIZE.

CASE

XXXIII.

N^o. D.

For an Instance of the Use of the above Table, suppose that a Person in the late *London* Lottery of 1753, wherein there were 11 Blanks to a Prize, should offer to pay £.200 for 100 received, if in the Number of 10 Tickets no one should be drawn a Prize: Then to know his Advantage or Disadvantage, we are to look for the Number of Tickets at the Head of the Table, and for the Proportion of Blanks to a Prize in the first Column to the left Hand; answering to which the Number 239 will be found, being the Sum that the Insurer might afford to pay, when all the Tickets come out Blanks, without being a Loser: So that by every £.239 (at a Medium) he gains £.39 clear. Hence it will be, as $239 : 39 :: 100 : 16 \cdot 6 =$ the Gain *per Cent.* upon all the Money he receives.

N^o. E.

For a second Example, let there be now supposed a Lottery, wherein there are only 4 Blanks to a Prize, and suppose the Premium to be £.60 for insuring the Number of 6 Tickets, and that the Sum to be paid back, if they are all drawn Blanks, is £.200. Here the Sum to be paid on an Equality of Chance, in Consideration of a Premium of £.100, appears to be £.382 : 4. But $60 : 200 :: 100 : 333 \cdot 3$, the Sum actually repaid for £.100, in case no Prize is drawn, this, subtracted from 382, 4 leaves 49, 1 = the Gain on 382, 4; and so we have $382, 4 : 49, 1 :: 100 : 12, 8$, or £.12 : 16, the Gain *per Cent.* of the Insurer in the Case last proposed.

C A S E

C A S E XXXIV.

Shewing that Persons abroad, advancing Money to Masters of Ships on Bottomry, ought to be convinced of the Necessity for such a Loan, and to see that the Money be actually employed for the Uses alledged.

THE *St. George*, a Transport in his Majesty's Service, was in 1742-3, commanded by Capt. *John Rafton*, who dying at *Jamaica*, he was succeeded by his Mate *Will. H--bton*, and the Ship loaded with King's Stores at that Island, for *London*; but it appears by a Protest the Captain made at *Carolina*, that he was forced through Distress to put in there, to repair his Ship, &c. and notwithstanding he had a Letter of Recommendation from one of his Owners, to Mr. *B. Godin* his Correspondent there, desiring him to supply the Captain with what he should want, yet not being able immediately to meet with him, the Captain accepted the Tenders of Mr. *William Y--ms*'s Assistance, who voluntarily offered to advance him what Money he should have Occasion for, on Bottomry; in Consequence of which the following Accounts were sent by Mr. *William Y--ms* from *Carolina*.

Charles-Town, the 25th of *April*, 1743. N°. A.

Account of sundry Disbursements supplied Capt. H--bton, for the Use of the Ship St. George.

To 100 Weight of Candles, at 5s.	£. 25
30 Weight of Tallow 4	6
8 Barrels of Beef £. 7	56
890 lb. Bread 4 per 100	35 : 12
90 lb. Gunpowder 35 per ditto	31
Cash paid him -	55
	----- £. 209 : 2

C c c 2

To

Cases of Insurances.

CASE
XXXIV.

To Captain <i>Brown</i> for a Boat	£. 58 : 16
Captain <i>Paterfon</i> by Order	- 73
Captain <i>Anderson</i> by Order	- 106
Your Note to <i>Douglas</i> and <i>M^cIntosh</i>	50
To <i>Rice Price</i> , by your Order	- 57
Cash paid <i>George Cleveland</i> , Chief Mate	- 140
	----- £. 484 : 16

To Cash paid <i>Richard Thied</i> , Steward,	
per Order	£. 30
ditto <i>Michael Roche</i> , Sailor	64 : 5 : 10
ditto <i>Peter Ville Pontaux</i> , Fire-	
Wood	8 : 15
ditto Yourself	- 30
ditto ditto	- 50
ditto ditto	- 20
	----- 203 : 10

To ditto ditto	- 50
To ditto <i>John Scott</i> , by Order	9
ditto <i>Richard Herbert</i> , by Order	23 : 10
ditto Marshal's Fees, and Buoy Money	4 : 15
ditto Yourself	- 50
ditto <i>Thomas Douty</i> , per your Order	- 7 : 7 : 6
	----- 144 : 12 : 6

To <i>Mary Watson</i> , for Negro Hire	89 : 10
To Negro Hire 120 Days (4 Negroes)	60
To 51 lb. Loaf Sugar at 5s. 6d. paid	13 : 18
To 111 $\frac{1}{2}$ Gallons of Rum 15s. paid	83 : 12 : 6
To 1 Barrel of Rice 536 lb. 35s.	9 : 7 : 7
To Cash yourself	- 40
	----- 296 : 8 : 1

To 80 lb. Tobacco 2s. 6d.	10
To <i>William Randall</i> , for Smith's Work	44 : 10
To <i>John Daniel</i> , Ship Carpenter	1370
To <i>Richard Mortimore</i> for Water	12

To

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XXXIV.

To William Glen, by Order	£.26	
To Rice Price, by Order	- 225	
William Street, by Order	193:14: 4	
		£.1881: 4: 4

Peter Bonnoist, Cooper, by Order	75	
Joseph Shute, Stowage	89	
James Thomson, Meat	265	
Joseph Wrag	- 14	
Alexander Petrie, Cask	97	
Jemmit Cobley, Bread	38: 2: 5	
		578: 2: 5

John Stone, Blockmaker	20	
George Avery, Sail-maker	102: 5	
Capt. Hammond, by Order	41	
Al. Crofts, Notary	13:10	
Pilotage	- 30	
Jos. Poinsett	43: 1: 6	
		249:16: 6

To 16½ Gallons of Rum	- 18:11: 3	
1 Barrel of Sugar, 280lb. at 10/.		
per 100	- 28	
Charges on Street's Arrest	40	
Cash 32 Dol. ½ at 32 s. 6 d.	52	
Capt. Robert Auston by Order	42:15: 7½	
		181: 6: 10½

2 Bushels Salt	- 2	
Rice Price, by Order	5:15	
Albert Crofts, Notary Public	6:10	
Capt. Robert Auston, for a Saw	5	
Cash paid him	- 11:10	
Rice Price, allowed for Butter	9	
		39:15

		4268: 4: 6½
My (Mr. Y--ms) Commiffion at 5 per Cent.		213: 8: 5½
		£.4481:13

Second

CASE
XXXIV.
N°. B.

Second,

Charles-Town, the 10th of May, 1743.

Account of sundry Disbursements for the St. George, after she
was struck with Lightening.

To Cash paid the Captain	£.30	
Joseph Shute, by Order	11:15	
49 Gallons Rum, at 15s.	36:15	
Your Order for taking 3 Men	50	
Mr. Freeman, for arresting dittos	30	
Diet paid in the Work-house	20	
		£.178:10
Charges paid for ditto Men	5	
Andrew Quetch, for a new Mast	66:14	
John Daniel, for Carpenter's Work	93:16:8	
John Randal, for Smith's Work	5	
John Stone, for Blocks	5	
James Thomson, for Meat	12	
		187:10:3
Joel Poinsett's Account	61:5	
Benne, the Cooper	2:10	
Diet of 3 Men in the Workhouse	3:10	
		67:5
Cash paid by your Order	20	
Smith, for Provisions	27	
2 Barrels Beef	14	
Albert Crofts, Notary	6	
		67
		500:5:3
Deduct per Poinsett's Account	33:1:6	
Silver	3	
Thomas Alman	107	
		143:1:6
		357:3:9
		To

Cases of Insurances.

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XXXIV.
N^o. C.

To Cash, for a Barrel Pork	-	£. 12
To Cash, paid for petty Debts	-	30
To 16 Ounces of Silver	-	30
		£. 429 : 3 : 9
Commission 5 per Cent.	-	21 : 12 : 9
		£. 451 : 16 : 6

For which two Accounts Mr. *Will. Y--ms* made Capt. *Will. H--bn* sign (at 500 £. *Carolina* Currency, for 100 £. *Sterk*) two Bottomry Bonds of £. 896 : 6 : 7, dated the 25 April, 1743, 90 : 17 : 5, the 10 May 1743, in the following Manner [a]:

South Carolina,

TO all People to whom these Presents shall come, *Will. H--bn*, Master of the Ship called *St. George*, belonging to *London* in old *England*, now riding at Anchor in the Harbour of *Charles Town*, and bound to the aforesaid Port of *London*, in old *England*, send Greeting.

Whereas I the said *Will. H--bn* being under unavoidable Necessity obliged to take up, upon the Adventure of the said Ship, the Sum of Eight hundred ninety-six Pounds, six Shillings, and seven Pence Sterling, for setting forth the said Ship to Sea, for furnishing her with Provisions, Part of Men's Wages, &c. for the said Voyage, which Mr. *Will. Y--ms* of *Charles Town*, Merchant, hath on my Request, in Behalf of the Owners of the said Ship, lent unto me, and supplied me with during the said Voyage.

Now know Ye, that I the said *Will. H--bn* do by these Presents, for me, my Executors and Administrators, covenant and

[a] Several Particulars of these two Accounts are something erroneous in the Originals, as the Reader may see; and we have left them so, not to make a Confusion by altering the Whole.

grant

CASE
XXXIV.

grant to and with the said *Will. Y--ms*, that the said Ship shall with the first fair Wind, after the 26th Day of *April*, depart from the said Harbour of *Charles Town*, and shall, as Wind and Weather shall serve, proceed in her Voyage to the aforesaid Port of *London* in old *England*: And I the said *Will. H--bn*, in Consideration of the said Sum of £. 896 : 6 : 7 *Sterl.* Money of *Great Britain*, or Value thereof to me in Hand paid by the said *Will. Y--ms*, at and before the Sealing and Delivery of these Presents, do in Behalf of the Owners of the said Ship, bind myself, my Heirs, Executors and Administrators, and particularly the said Ship *St. George*, with the Freight, Tackle, Guns and Appurtenances of said Ship, unto the said *Will. Y--ms*, his Executors, Administrators, or Assigns, for the Sum of £. 896 : 6 : 7 Money of *Great Britain* as aforesaid, at her safe Arrival in any Port of *England*, from the said intended Voyage. And I the said *Will. H--bn*, do also for me, my Executors and Administrators, covenant to and with the said *Will. Y--ms*, his Executors and Administrators, or Assigns, by these Presents, that I the said *Will. H--bn*, at the Time of Sealing and Delivery of these Presents, am true and lawful Master of the said Ship, as aforesaid; And the said Ship and Freight shall at all Times, after the said Voyage, be liable and chargeable for the Payment of the said Sum of £. 896 : 6 : 7 *Sterl.* Money aforesaid, according to the true Intent and Meaning of these Presents; And that then, and from thenceforth, every Act, Matter and Thing herein contained, on the Part and Behalf of the said *Will. H--bn* shall be void, any Thing herein contained to the contrary notwithstanding. In Witness whereof, I have hereunto set my Hand and Seal this 25th of *April*, 1743, and in the 16th Year of his Majesty's Reign, &c.

Witnesses

W. H--bn. (L.S.)*J. A.**N. S.**W. T.*N^o. D.

And whereas in the above Accounts several Articles appeared, for which no Vouchers were sent by the said *Will. Y--ms*, nor declared by the Captain *Will. H--bn*, how they were

were laid out; Mess. R. R. and N. M. at *London*, appointed by the Owners to receive and pay, what was due for the said Ship *St. George*, opposed the Payment of the above two Bottomry Bonds, whereupon an Action was brought against the Ship in *Doctors Commons*, for and in Behalf of Mr. *Will. Y--ms*, and by an Extract from the Registry of the High Court of Admiralty of *England* it appears, that *Thursday* the 26 of *October* 1743, before the Worshipful *William Straban*, Doctor of Laws, Surrogate of the Right Worshipful Sr. *Henry Penrice*, Knight, also Doctor of Laws, Lieutenant of the High Court of Admiralty of *England*, and in the same Court, Official Principal, and Commissary General, and Special, and President, and Judge thereof, lawfully constituted and appointed in the Chamber of the said Surrogate at *Doctors Commons*, *London*, in Presence of *John Bottrell*, Notary Publick.

CASE
XXXIV.

N°. E.

Will. Y--ms of *Charles Town* in the Province of *South Carolina* in *America*, Merchant, against the Ship called the *St. George*, (whereof *W. H.* now is or lately was Master) and her Tackle and Furniture, and also against whatsoever Freight is due for Transportation, or Importation of certain Wares and Merchandise in the said Ship, from the Province of *South Carolina* in *America* to the Port of *London*; and also against all Persons in general, who have, or pretend to have, any Right, Title, or Interest therein.

Sayer.

Cheslyn.

them, and produced for Surities, *Nicholas Magens* of *Savage*

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D d d

vage

Which Day *Cheslyn* exhibited his Proxy for *John Thornton Esq;* and Company, Owners of the said Ship, called the *St. George*, (whereof *W. H.* now is, or lately was Master) and her Tackel, Apparel and Furniture, and also her Freight, whatsoever due, for the Transportation, and Importation of certain Goods, Wares and Merchandise in the said Ship, from the Province of *South Carolina* in *America*, to the Port of *London*, remaining in the Hands of *John Owen* and Company *James Crockatt*, *Rodrigo Patcheco*, and made himself Party for

N°. F.

CASE
XXXIV.

vage Gardens, and *Libert Dorrien* of *Fenchurch-Street*, *London*, Merchants, who submitting themselves to the Jurisdiction of this Court, bound themselves, their Heirs, Executors, and Administrators, for *John Thornton Esq;* and Company in the Sum of £. 1050, lawful Money of *Great Britain*, unto *Will. Y--ms* of *Charles Town* in the Province of *South Carolina* in *America*, Merchant, to answer the Action commenced in this Behalf, and to bring forth the said *John Thornton Esq;* and Company into Judgment, and to pay what shall be adjudged with Expences, and unless they shall so do, they do hereby severally consent, that Execution shall issue forth against them, their Heirs, Executors, and Administrators; Goods and Chattels, wheresoever the same shall be found, to the Value of the Sum abovementioned; which Caution the Surrogate received, upon the Report of *Thomas Stone*, Deputy Marshal of this Court of Sufficiency of the said Sureties, and Decreed the said Ship, and her Tackle, Apparel and Furniture, and also all and singular the said Freight to be released from the Arrest made in his Behalf.

Examined

SAMUEL HILL,

Register.

N^o. G.

After which Release, Mr. R. R. and N. M. who willingly would have Justice done to all the Concerned in the Ship, made more than once a Proposal to Mr. Y--ms Agent to leave all Differences to Arbitration, or if he would abate from the Bottomry Bonds so much as could be proved not to have been laid out upon the Ship, and seek his Redress from the Master, they would pay him the Capital, and what Interest had been made with it, employed in *East-India* Bonds, ever since it came into N. M--s Possession, and in order to come at a Certainty, what Part of the Money received by the Master, was not expended on the Ship, or what the Master remained

N^o. H.

in Debt to her Owners, two experienced Captains, and Men of Honour were appointed to be Arbitrators, the one for, or in Behalf of the Master, and the other for, and in Behalf of the Owners, to examine all Accounts delivered by the Master, who decided,

decided, that of the above Accounts £. 4986 : 10 : 6 paid by Mr. *Will. Y--ms*, the Sum of £. 768 : 14 : 2 was for the private Use of the Master, and nothing relative to the Ship, which at 500 *per Cent.* makes £. 134 : 8 *Sterl.* and this deducted from the Amount of the Bonds, that are together £. 987 : 4 would leave but £. 852 : 16, for which Mr. *Y--ms's* Agent had refused to accept a Tender made him of £. 887 : 4 : 1. However as the Ship's Owners were desirous to have the Affair settled, and made an End of, and as *N. M.* had gained by the Detention of the Money an Interest on the *East-India* Bonds to the Amount of £. 71 : 4, he resolved to add the Half thereof £. 35 : 12 to his former Tender of £. 887 : 4 : 1, and so paid into Court the Sum of £. 922 : 16 : 1, whereupon the following Conclusion resulted:

Nº. I.

High Court of Admiralty
Y--ms against the *St.*
George.

Crespigni.

Cheslyn.

Wednesday the 29 Day of July
1747, before the Worship-
ful *Robert Chapman*, Doctor
of Laws, a Surrogate in his
Chambers, present *George*
Bellas, Not. Publ. Deputy
Register.

Nº. K.

Which Day *Cheslyn* tendered and left in the Registry of this Court the Sum of £. 922 : 16 : 1 in full Payment and Satisfaction of the Bills of Bottomry, libelled for in this Behalf, and declared, that such his Tender so made as aforesaid to his the said *Crespigni's* Client he so made without any Costs, or Expences whatever, and prayed that the said Surrogate would please to assign *Crespigni* to declare, whether he accepted such Tender in full Satisfaction of the Demand of his Client, made and libelled for in this Suit, to which the said *Crespigni* immediately consented, and accepted the said Tender without Costs, in full Satisfaction and Payment of his Client *Will. Y--ms's* Demand, and prayed, and at his Petition the said Surrogate decreed the said Sum of £. 922 : 16 : 1 to be paid from and out of the Registry of this Court to him the said *Will. Y--ms*, or his lawful Attorney or Proctor, giving the usual Security, and at the Petition of *Cheslyn*; by his interlocutory Decree, dismissed his Clients from this Suit, and released and discharged the Bail,

Nº. L.

CASE entered into on this Behalf, and decreed the several Bottomry
XXXIV. Bills annexed to the Libel, and pleaded therein to be delivered
to the said *Cheslyn*, or his Clients, being first registered.

Examined.

N^o. M. It is to be observed, that when the Ship *St. George* arrived at
London from *Carolina*, (the last Place she left) she was indebted,
besides the above Bottomry Bills due to Mr. *Will. Y--ms*,

To her former Captain, *John Rafton*, for Ballance from
Jamaica £. 566 : 12 : 4

To Mr. *Thomas*, for a Bottomry Bond from
Jamaica 220

To a Bill of Exchange drawn from *Jamica*
by *Will. H--bn* 200 : 5

To Stores, due to the Victualling Office

£. 229 : 10 : 6

To Men's Wages due 409 : : 7

To *London* Port Charges, &c. 156 : 7 : 2

To a general Average

For the Ship 1000 £. } 165 : 3

For Freight 640

960 : 1 : 3

£. 1946 : 18 : 7

And although it was known, that there was due to the Ship,
from the Navy Office, a considerable Sum for the King's Service,
yet it could not well be calculated, how it would turn out
upon the Whole, till the Account with the Navy Office was
settled; and if the Ship had not been drawn out of the *Commons*
by *N. M.* giving Security, every Thing must needs have been
settled there, which would have occasioned a great Loss of
Time, and Expence, and perhaps more than one Suit to deter-
mine who were the Creditors, and in what Order they should
be paid? For from the Value of the Ship, which sold for

£. 825

And the Freight from *Carolina*, amounting

in the Whole to 930 : 6

Freight

Cases of Insurances.

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CASE
XXXIV.

Brought over	£. 1755 : 6
Freight for the King's Stores, due from the Victualling Office	165
	£. 1920 : 6

Undoubtedly there must first have been satisfied the abovementioned four *Items*, amounting to . . . £. 960 : 1 : 3

N°. O.

And farther, all the Charges in the *Commons*, supposed to be . . . 200

1160 : 1 : 3

There could not have remained to satisfy Mr. *Y--ms*'s 988 £. more than . . . £. 760 : 4 : 9

Because what was due by the Navy to the Ship before she came to *Carolina* could not have been deemed answerable to Mr. *Will. Y--ms*, as *H--bn* could only pledge him, what was in his Possession, and the Heirs of *Rafton*, the former Master, (who had been the Contractor with the Navy) must naturally have been first paid out of what was due whilst he lived, and upon which he had advanced £. 566 : 12 : 4, &c.

Moreover, the following Particulars must have been cleared up to the Court, against the Bottomry Bonds of Mr. *Y--ms* : N°. P.

First, That it was an absolute Necessity which drove *H--bn* into *Charles Town* Harbour, and that, to prosecute his Voyage, the laying out the Sums of Money, comprehended in *Y--ms*'s Account, was unavoidable; and besides, to have acted conformable to Marine Laws and Customs, a proper Survey by intelligent Persons, appointed by public Authority, should have preceeded, to judge in what his Wants really consisted.

Secondly, Proofs that all such Sums were actually expended on the Ship, and Provisions, for completing her Voyage.

Thirdly,

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XXXIV.

Thirdly, As Mr. Y--ms charged the Owners a Commission, it was undoubtedly his Duty to act as most for their Advantage, and must have proved, that no Body else would have given the Money on Bottomry, on cheaper Terms.

Fourthly, And as in the Voyage from *Carolina* to *London*, Part of her Cargo was thrown over-board, for which the Ship and Freight contributed for £. 1640 £. 165 : 3. The Question must have been decided, whether any, or what Proportion Mr. Y--ms ought to bear, for his £. 988 Adventure therein?

In Consideration of all which, the Court undoubtedly would have allowed a greater Abatement from Mr. Y--ms's Bonds, than was insisted on by the Tender now made by *N. M.* being only £. 100 short of his £. 988,
and 35 : 12 of the Interest he had gained,

£. 135 : 12, which makes about the same Sum, as had actually appeared to the Arbitrators, not to have been laid out upon, or for the Ship's Benefit, but for the private Use of the Captain, whereupon Mr. *Crespigni*, however litigious his Client was, would not longer oppose so generous an Offer.

N^o. Q. Persons living in Sea-Ports, may learn from this *Case*, not to believe, or trust too easily a Captain they do not know; and when they propose benefiting themselves by lending Money on Bottomry, to such whose Distresses oblige them to seek it; the Lenders for their own Satisfaction and Security ought to have Proofs given, that there was a Necessity for such an Advance, and that the Money had actually been employed for the Purposes alledged. (See Essay § 24. pag. 27.)

CASE

C A S E XXXV.

Remarks from Ricard's Negoce d'Amsterdam on Bargains at Option in Goods for Premiums, or Insurances, to have the Refusal of Goods at a certain Price.

THOSE that buy on a certain Bargain, cannot know what Profit or Loss they are to have on what they have so bought untill they resell; and the Price of Goods may rise or fall much at the Expiration of Contracts, so that they may chance to lose considerably, when at the Time of making the Contract, they expected to have made a great Profit: Prudent People therefore, who do not chuse to risk a great Deal on Goods which they think must rise or fall considerably, do not care to buy nor sell on a certain Bargain, but choose rather to give an agreed Sum to some body who in Consideration thereof obliges himself to deliver or receive the Goods in Question at an appointed Time, and at a limited Price, if they think proper to insist on his delivering or receiving them; on Condition, that if at the appointed Time they do not request the Fullfilling of the Contract, the Sum given will be lost, and the Contract void. The Sum given is called Premium, and the Liberty that the Giver of the Premium has to have the Contract fullfilled or not, is called Option, and the Contracts are made to the Bearer. Here follows a Copy of the first of those Contracts, that happened to fall in our Way:

I the underwritten confels to have received of the Bearer the Sum of *One hundred and fifty Guilders* currant Money, against which I engage and bind myself *to deliver* from henceforth at any Time untill *the First of January, One thousand, Seven hundred and Fifteen*, that Day inclusive, *Ten thousand Pounds of good and deliverable Dutch made Starch*, at the Price of *Sixteen Guilders currant Money for every One hundred Pounds*, to be paid in ready Money and as customary; but if the Bearer of this

CASE
XXXV. this does not give me Notice *that I am to deliver him the said Ten Thousand Pounds of Starch*, between this Day and the First of January, 1715, that Day inclusive, I shall be free, and discharged of this present Contract, and the Premium will be mine, and I shall never be obliged to restore the same, nor shall ever any Body be entitled to reclaim the same. So done, *bona fide, Amsterdam, the 6th of January, 1714.*

Signed

G. V. H.

These Contracts may be had ready printed of the Stationers at *Amsterdam*, and the Blanks need only be filled up with the Sum given, the Quality and Quantity of the Goods, the Price and Time of Delivery, as may be perceived by what is printed in a different Character in the foregoing Contract, which is a Contract of Premium for to deliver.

By the Contents of this Contract it appears that *G. V. H.* was bound to deliver to the Bearer of the same, during the whole Year 1715, 10,000 lb. of Starch, at 16 Guilders *per Quintal*, in Consideration of the 150 *Fl.* Premium he received; wherefore whatever the same had got up above 17 $\frac{1}{2}$ Guilders the *Quintal*, would have been in our Favour; and if it had got up to 20 *Fl.* we might have sold this Contract for 4 *Fl.* or more Premium *per Quintal*, or we might have insisted on the 10,000 lb. of Starch being delivered to us at 16 *Fl.* But as the Price of Starch that Year fell instead of rising, as we expected, we lost our Premium, and the Contract was void; it being contrary to Reason and common Sense to expect that we should receive Starch at 16 *Fl.* *per Quintal*, when it could be bought at 12 or 14 *Fl.* But if for Instance Starch had risen to 16 $\frac{1}{2}$ or 17 *Fl.* we should have demanded the Starch; since, although it would have stood us in 17 $\frac{1}{2}$ *Fl.* considering the 30 *s.* *per Quintal* we paid for Premium, we should have regained Part of the Premium by selling the Starch at 16 $\frac{1}{2}$ or 17 *Fl.* But had we given our Premium to receive instead of delivering, the Contents of the Contract would have been as follows:

I the

I the Underwritten confess to have received of the Bearer the Sum of *One hundred and fifty Gilders*, current Money, in Consideration of which Premium I engage and bind myself to receive from henceforth at any Time until the *First of January, One Thousand Seven Hundred and Fifteen*, that Day inclusive, *Ten Thousand Pounds* good deliverable Dutch made Starch, at the Price of *Sixteen Gilders* current Money for every *One Hundred Pounds*, to pay ready Money, and as customary; but if the Bearer of this does not give me Notice that *I am to receive the said Ten Thousand Pounds Starch*, between this Day and the *First of January, 1715*, that Day inclusive, I shall be free and discharged of this Contract, and the Premium will be mine, and I shall never be obliged to restore the same, nor shall ever any Body be intitled to reclaim the same. So done, *bona fide*, *Amsterdam*, the 6th of *January, 1714*.

G. V. H.

This Contract is intirely the Reverse of the former, since it is the Interest of him who gives the Premium for Delivery, that the Goods should rise, and that the Interest of him who gives the Premium for receiving is, that the Goods should fall; and thus had we given the above Premium to receive, whatever the Starch had fallen under $14\frac{1}{2}$ Fl. would have been in our Favour; and had it gone to 10 Fl. we might have disposed of our Contract with Profit, or obliged G. V. H. to receive and pay us the 10,000 l. of Starch at 16 Fl. per Quintal.

These Contracts are sold and re-fold at Pleasure, without any Indorsement or Guaranty of those who sell, when they are signed by good and known People: But those who give the Premiums before they conclude any Thing, should know the Names of those who signed the Contracts, and not too much rely on the Broker's Word, who will often assure that the Contractors are very good, but will not name them until the Bargain is struck; though to be sure in such a Case, should the Giver of the Premium not approve of the Contractor, he may very justly recant.

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XXXV.

The Takers of Premiums very often engage themselves to much more than they think, for there happen such unforeseen Accidents in Trade, that the Goods they bound themselves to deliver or receive, rise or fall from 25 to 30 *per Cent.* during the Time of their Engagement: Besides, there are a Thousand Artifices practised in this Way of Traffick, and very often even Rogueries; so that if one launches out in it too far, it is almost impossible not to be ruined. We could write a whole Volume of Practices of this Kind, which we have observed for these twenty Years past; but it being foreign to our Purpose or Intention, we rather chuse to finish this Chapter with observing, that it is a great deal better to give than to take Premiums, because he that gives the Premium is under no Engagement, and loses nothing more than his Premium in case the Goods do not arrive to the Price he imagined.

On certain Bargains, as well as on Premiums, are negotiated:

The *East-India* Company's Stock of the Chamber of *Amsterdam*.

The *West-India* Company's ditto.

The *English East-India* Company's Stock, although it be prohibited at *Amsterdam* to sell any.

Contracts are likewise very frequently negotiated there in the same Manner for Pepper, Salt-petre, *Levant* Coffee, *India* Coffee, Cocoa, Cochineal, Brandy, both of Wine and of Grain, Corn, Whale-bones, Whale-oil, Starch, Borax, and most other Sorts of Goods, when they either begin to grow scarce, or that there is great Plenty of them, provided the same can be ascertained at a certain Value or Goodness, which in such Cases ought necessarily to be fixed and established.

CASE

C A S E XXXVI.

Shewing in what Manner a Distribution was made to the Insurers and others, on Goods being the Property of Enemies, taken in a Dutch Ship, and condemned at Doctor's-Commons, and afterwards restored by the Lords of Appeal.

IN the late War between *England, France, and Spain*, the first of those Powers, by her Superiority in Naval Strength, soon made herself Mistress of the Sea: The *Dutch* in the Interim not inclining to interfere in the Quarrel, remained a long while neuter; and in the Beginning of the War the *English* kept up to a strict Observation of the Treaties of Commerce made with that Nation in the Years 1667 and 1674; wherein it is stipulated that the Subjects of each should be at Liberty to navigate freely to and from any neutral Port or Place whatsoever, to any Port in Enmity with the other; and that such Freedom of Navigation and Commerce should not be infringed on Occasion of any War; nor should one or the other be impeded or molested in conveying any Kind of Merchandizes and Commodities that were carried in Time of Peace; except those only which are expressed in a subsequent Article of the Treaties, and are to be comprehended under the Name of contraband Goods. And it has been often a decided Point in former Wars, that by Virtue of these particular Conventions between *England* and *Holland*, the Ships of either Nation should and did give Freedom of Conveyance to Enemies Property (Warlike Stores only excepted) but on the other Hand, that whatever Property of either of these Powers should be met with on board an Enemy's Ship, was to be deemed lawful Prize and confiscated. This is somewhat different from the general Laws of Nations, as well as from other particular Treaties of Commerce concluded by *England* with *Denmark* and *Sweden*, &c. whose Ships in Time of War are only permitted to navigate free with neutral Property.

N°. A.

N°. B.

N°. C.

CASE
XXXVI.
N°. D.

In full Reliance on the before-mentioned Treaties, *H. M.* a Merchant at *Hamburg*, having a great Quantity of Merchandizes to ship for Account of his Friends in *Spain*, in the Year 1747 made Choice of, and chartered a *Dutch* Ship called the *Juffrow Elizabeth and Susanna*, Capt. *Tjert Bouwes*, to load for *Alicant*, *Carthagen*, and *Barcelona*; with this special Condition, that no contraband Goods should be admitted on board her.

And he himself shipt on her, for Account of Merchants residing in *Spain*, sundry Merchandizes, not contraband, amounting, with the Premium of Insurance, to the Sum of

Banco Mks. 190,076 : 6

S. T. and Sons shipt for Account of Merchants in <i>Spain</i>	-	-	6,975
Several other Merchants at <i>Hamburg</i> shipt for their own, and other neutral People's Account	-	-	44,070

N°. E. This Ship was met in the Channel by two *Bristol* Privateers called the *Tyger* and *Tygreß*, who carried her to *Bristol*: And notwithstanding her being a *Dutch* Ship, the Captors by their Agent sued for a Condemnation in *London* at *Doct^r's-Commons*, whereby all the Goods not proved to be neutral Property might be condemned as good Prize.

The Judge of the Admiralty, who in the Beginning of this War had (conformable to the Treaties of Commerce subsisting between *England* and *Holland*) never insisted upon any other Proof with Respect to Ships sailing under *Dutch* Colours, than that the Ship was *Dutch* Property, and no contraband Goods amongst her Cargo, now altered his Method of Proceeding in regard to this and some other *Dutch* Ships that were likewise taken; and ordered that Proofs of the Property of all the Goods should be brought into Court; and in consequence thereof it appearing that Certificates were sent for only the Goods which amounted as above to Mks. 44,070, proving them to be for Account of neutral People, he released the Ship, and those particular Goods only, and condemned all the rest as lawful Prize, in Favour of the Captors, in direct Opposition to the Treaties

Treaties of Commerce then and still subsisting between *England* and *Holland*. CASE XXXVI.

H. M. the Freighter of the Ship, and Shipper of much the greatest Part of the Cargo for the Account of his Friends in *Spain*, prudently considering that after a War had been protracted any Length of Time, it was seldom that a strict Regard was paid to Treaties, and being unwilling at all Events to run any Risks, he ordered the following Insurances to be made on the Goods he had shipt, viz.

Mks. 107562 : 10 at <i>Amsterdam</i>	} from all Risks of the Sea, Re- straint and Detentions of Princes, &c.
64318 : 12 at <i>London</i>	
11980 : 12 at <i>Leghorn</i>	

And as *N. M.* at *London* had made Insurances for him there to the Amount of £. 3250 and £. 470 Sterling, he was desired on the Condemnation's being declared, immediately to recover the Payment of the Sums insured: And as soon as the Value of the Insurance was proved to have been on board, the *London* Insurers, with their usual Punctuality, paid in full; and induced by their Example, the Insurers at *Amsterdam* and *Leghorn* did the like.

N^o. F.

Thus this Affair was no longer the Concern of the Shipper at *Hamburg*, nor of his Friends in *Spain*, but of the Insurers: And although far the greatest Sum was insured at *Amsterdam*, the Insurers there gave themselves not the least Trouble about it: And indeed a great many People in *England* were apprehensive that the unavoidable Charges attending an Appeal would be but throwing certain Money after uncertain: And actually for Want of appealing, no Satisfaction at all has ever been obtained for a great many Goods taken in *Dutch* Ships, and were condemned for no other Reason. However, *N. M.* and some others did not think proper to give up their Insurers Cause so easily: And as it appeared clearly by the Ship's Papers delivered into *Deftor's-Commons*: First, That the *Elizabeth* and *Susanna* was intirely *Dutch* Property. Secondly, That her Passports were conformable to what had been prescribed by Treaties: And Thirdly, That nothing of contraband was amongst her Cargo. They judged that the different Procedure in the Court of Admiralty from

N^o. G.

CASE XXXVI. from what it set out on at first, might be occasioned only with a View of putting a Stop thereby to the Trade carried on by the *Dutch* with the Enemies; which might bring them the sooner to give the Assistance to the *English*, which by other Treaties they had obliged themselves to do, in case of a War: And that therefore on appealing properly, it was natural to believe that Satisfaction would afterwards be made by the Lords of Appeal, for what Damages had been sustained by such Captures.

N^o. H.

But as no Appeal can be made except in the Captain's Name, and Security must be given on his Part, to make good all the Charges, &c. if the Sentence at *Doctor's-Commons* should be confirmed: Besides, it was indispensibly necessary that the Ship and her whole Cargo should remain together untouched, till the Cause came to be decided by the Lords of Appeal: And it happening likewise at a Time when a Multiplicity of Causes were prior to this, and must be heard first in Course: These were Difficulties which in this, as well as in some other Cases of the like Nature, were not easily to be surmounted; for the Captain of the Ship (who was released) was dubious who should pay him for the Detention in case the Sentence should be confirmed; alledging that perhaps the Ship might lay and rot by the length of Time. The Owners of the Goods which were released likewise opposed his making any longer Stay, when once their Goods, together with the Ship, had been legally discharged. But notwithstanding, upon *N. M's* protesting against the Captain, and declaring that in case he departed without appealing, he would be sued on his Arrival in *Spain* for not having done his Duty, and used his Endeavours to recover his Cargo, he consented to appeal. And when he had so done, on *N. M's* representing to the Agents for the Privateers that in case the Sentence obtained at *Doctor's-Commons* should be reversed, they would not only be obliged to make good all the Charges, but also whatever Damages had already, or might by the Delay further result to the Ship and Cargo; they became inclinable to listen to Terms. Whereupon *N. M.* with the Approbation and Consent of his Insurers at *London*, and *H.* and *P. M.* for the Owners of the Ship, as likewise jointly with *N. M.* for the Insurers at *Amsterdam*, agreed with the Agents for the Privateers, as follows:

First,

First, That the Agents for the Privateers should, with our Intervention, make a public Sale of all the Goods condemned.

Secondly, That the neat Proceeds (deducting the Duties, Charges of landing, and a Commission of 5 per cent. on the Sales) should be invested in India Bonds and deposited in the Bank, under our joint Seals and Disposal.

Thirdly, That when the Cause should be decided, the Party which obtained a Sentence in its Favour, should take the India Bonds, with all Interest that might be due thereon; each Side bearing its own Charges of the Law.

By this Convention, as our Council in Behalf of the Cargo argued before the Lords of Appeal, we had been more favourable to the Captors, than they were of Opinion we should have been: But as Merchants we knew how to perceive our Interest, and considered that in this Manner

First, We freed the Ship and Goods released, from any further Expences and Damages.

Secondly, That when any Cause of the same Nature for other People came first to be decided, we might be certain of the Destiny of ours, and therefore if lost should be at little or no further Expences. And

Thirdly, That it would not be difficult to find out some plausible Reason or Excuse to justify the Capture and Seizure, though the Goods should be discharged; so that we had little or no Hopes for Recovery of Costs.

And even if the adverse Party should be adjudged to make good the Damages on the Goods, we might possibly be engaged in a long Contention about the Quantum; and that after all, their Securities might be found deficient, as in Effect did afterwards happen to some others, who had a little too tenaciously adhered to the Letter of the Law. But now our Ship *Elizabeth* and *Susanna*, on the above Agreement being made with the Agents
of

CASE
XXXVI.

of the Privateers, pursued her Voyage with the released Goods to *Spain*; where the Captain, as long as he was uncertain if ever he should recover any Thing from the Captors, insisted that those Goods alone which were discharged as aforesaid, together with the Ship, should contribute according to their respective Values, and thereby make good all the Charges he had been at in *London*. According whereto *J. W. S.* the Regulator of Averages at *Hamburg*, made the following Adjustment.

N°. K.

Account of the General Average upon the Capital given free, according to the Account of Messrs. M. and A. at London, dated the 19th of August, 1748, viz.

To Henry Farrant, Proctor in Doctor's-
Commons, for Law Charges, occasion-
ed by reclaiming the Ship and Cargo,
as per Account, Let. E. £. 97 : 6

To Postage from and to *Hamburg*
and *Bristol*, with Affidavits, and
Brokerage of Drafts 2 : 4

To their Trouble and Attendance
in Doctor's-Commons for the
Goods given free. 40

To a Copy of a Protest against the
Privateer - 10 : 6

£. 140 : 6

2 34 s. 9 d.

Banco Mks. 1824 : 11

Out of the Account, Let. F. of the Concerned in the
Ship, being £. 1632 : 6, the following Arti-
cles are to be made good, instead of £. 1445 De-
morage for the Ship, 289 Days a £. 5.

Accord-

Cases of Insurances.

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Brought over B°. Mks. 1824 : 11

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According to a Note L. G. monthly Wages
amount to :

N°. L.

Pr. the Captain	Fl. 55	} According to a Declaration L. A. the Ship was taken the 1 st Nov. N. S. and the Goods have been unloaded the 3 ^d May agreeable to a Letter L. H. and the ⁶ / ₁₁ Aug. when the Ship was ready to sail, are 9 ¹ / ₂ Months.
- the first Mate	36	
- the second Mate	24	
- the Carpenter	36	
- the Boatfswain	24	
- the Cook	24	
- the Sailmaker	18	
- the under Carpenter	8	
- seven Sailors,		
a Fl. 16	112	
- three Boys	22	

at Fl. 359 per Month

amounts to Fl. 3410 : 10, a 105 per Cent. 3897 : 12

Board-wages for 17 Sailors, 289 Days,

a 10 d. . . . £. 204 : 14 : 2

Ditto . . for the Captain

a 3 s. 6 d. . . . 50 : 11 : 6

Fire Money 31 : 5 : 8

To divers Protests against
the bringing up and un-
loading the Goods . . . 3 : 6 : 10

To Pilotage from Ilfracombe
up the River, and after-
wards with 6 Boats and
40 Men to her anchoring-
Place 10 : 10

To 144 Tuns Ballast, instead
of the Goods that were
unloaded 7 : 4

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F f f

To

*Cases of Insurances.*CASE
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Brought over B°. Mks. 5722 : 7

To Pilotage out of the Road
with 6 Boats and 40 Men
to *Coombe* . . . 3 : 9

To the Broker and In-
specter . . . 10 : 10

To Port-charges . . . 2 : 10

To Commission of the Cor-
respondents at *London*
and *Bristol* . . . 40

£. 370 : 1 : 2

a 34 s. 9 d. . . . 4822 : 9

To Interest of the Demorage of the Ship,
as also for the Wear and Tear of the same
and of the Materials, nothing has been
allowed.

To Disburse of Money, is allowed for In-
terest 500

*To the Gentlemen Deputies at Hamburg
of the Goods given free :*

Pr. to the Notary *W.* as per Account of *K.*

Mks. 25 : 8

- to the Broker *G. L.* . . . 28 : 8

- to procure a Payment
of 12 per Cent. . . . 8 : 3

- to Postage of Letters . . . 27 : 7

Mks. 89 : 10

a 116 per Cent. . . . 77 : 9

Com-

Cases of Insurances.

413

Brought over B°. Mks. 11122 : 9

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Commiffion to the Deputies at <i>Hamburg</i>	300
For my Commiffion of this Average, charge only	58
To the Clerk	6
To the Poor, for the Settling of it	4 : 11

B°. Mks. 11491 : 4

These Mks. 11491 : 4 being proportioned on the Capital of Mks. 58000, is upon each Mk. 100 Mks. 19 : 13, which is to be paid by the following :

N°. M.

Mess. <i>H. v. S.</i> and <i>S.</i> for Mks. 3850	-	Mks. 762 : 12½
Mr. <i>S. D. M.</i> 2000	-	396 : 4
Mr. <i>G. A.</i> 5770	-	1143 : 3
Mess. <i>P. V.</i> and <i>S.</i> 2050	-	406 : 2½
Mr. <i>B. G.</i> 2450	-	485 : 6½
Mess. <i>S. T.</i> and <i>S.</i> 1200	-	237 : 12
Mr. <i>J. C. C.</i> 26750	-	5299 : 13½
The Ship <i>Lady Elisabeth</i> and <i>Sufannah</i> 13700	-	2714 : 5
The Freight 230	-	45 : 9

Mks. 58000 - Mks. 11491 : 4

Hamburg,
the 7 July 1750.

J. W. S.

F f f 2

But

CASE
XXXVI.N^o. N.

But then the Deputies for these released Goods insinuated by several Letters from *Hamburg* to us, who had the Care of the Appeal, that, in Case we should obtain a Restitution of the Goods condemned, we ought to contribute proportionably to the above General Average; but when in Answer we desired to know, if they would bear a Part of the Charges which the Appeal might create, we never could obtain any Explanation from them to that Point.

N^o. O.

Here at *London* we contented ourselves with our Insurers having given it under their Hand, to make good what Charges we should be at, but we requested from the Insurers in *Amsterdam*, that they would remit us 4 per Cent. on Account of the Charges we must necessarily be at, in the Pursuit of our Appeal, before we should be able to bring the Cause to a Hearing, and we had a good Deal to do to convince the *Amsterdam* Insurers of the Goodness of their Cause, before they would agree to any Advance of Money; and from the *Leghorn* Insurers, we obtained no Answer at all upon this just Request. The like Difficulties have been the Cause, that many of the Ships stopped in *England*, were not sooner released; and made the Charges run higher than otherwise they would have done. When we had received from *Amsterdam* a Remittance of £. 450 on Account of the Charges already commenced, and to be further incurred, we soon found Means to bring our Affair to a Hearing, before the Lords of Appeal, and obtained a Sentence that all the Goods should be restored, and each Party bear its own Charges. Whereupon we received out of the Bank

The Capital deposited in *India* Bonds to the Amount of

£. 10400

The Interest on the same

920 : 19 : 6

Per Ballance for the Privateers from *H. Z.*

14 : : 4

 £. 11334 : 19 : 10

And

And then the Question was, *How to distribute the same?*
For

First, The Owners of the Ship demanded to have made good to them, all the Remainder of the Ship's Demorage that not had been allowed to them at *Hamburgh*, together with what Freight they lost.

Secondly, The Owners of the before released Goods insisted upon having made good, Part of the general Average.

Thirdly, But the Insurers at *Amsterdam* were of Opinion, since they evaded to contribute or advance their Part to the Charges of Appeal, they had no Right to be benefitted by it.

And as the Insurers at *London* left it to *N. M--s* to make such a Division as he judged to be equitable, he found it reasonable, since the Appeal was made in the Name of the Captain, and the Goods were restored to us by that Means, that we ought first to satisfy out of it, what was due to him, and thus a Part of what was charged at *Hamburgh* in the General Average ought to be considered as a Disburse made by the Captain upon the Ship and Cargo together, before they were separated, and for which they jointly remained indebted, and now by his Appeal he had got the Goods restored, with only the Loss of some Law Charges and some small Diminution in its Value, he ought also to receive an equal Proportion for his Freight of what the restored Goods had yielded neat.

Thus *N. M--s* separated the following Sums from the General Average regulated at *Hamburgh*, which he was convinced ought to be born separately and solely by the Proprietors of the first released Goods, *viz.*

N°. Q.

Mks.

CASE
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Mks. 1824 : 11 charged by M. and A. at London for proving particular Properties, &c.

500

77 : 9

300

58

6

} charged by G. at Hamburg on ditto.

Mks. 2766 : 4

But admitted that of the Mks. 3897 : 12 charged for Men's Wages and Provisions.

These last restored Goods ought to bear a proportional Part
at 34 s. 2 d. : £. 304 : 4 : 3

And further from the Ship's Charges of 370 : 1 : 2

£. 674 : 5 : 5N^o. R. And as the neat Produce of the Goods restored by the Appeal appeared

to have been £. 10793 : 15 : 11

Deduct Char-

ges . . . 943 : 15 : 11

£. 9850And the Goods
first released

Mks. 44070,

making Ster-

ling . . . 3439 : 12 : 3

The Ship, Mks.

13930, Sterl. 1037 : 4 : 4

£. 14376 : 16 : 7Therefore as £. 14376 : 16 : 7
is to £. 674 : 5 : 5, so £.
9850 will be to

£. 462

Deduct Proportion
of Charges $8\frac{1}{4}$ per

Cent. . . . 40

To be made good

as under . £. 422

Viz.

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CASE
XXXVI.

Viz. Mks. 44070 Goods
13930 Ship

Mks. 58000

If Mks. 58000 produce { 44070? Answ. £. 320 : 13 to Goods.
£. 422 what shall { 13930? - 101 : 7 to the Ship.

Mks. 58000

£. 422

And as the Freight of the Goods condemned before, amounted to 1100 Ducats, or £. 254, we may compute, if £. 15390 their Cost, yield neat £. 9794, then £. 254 ought to yield neat
£. 159

And so the following Resumen and Division of the Whole
resulted :

Amount

CASE
XXXVI.
N^o. S.

*Amount of the Goods according to
their Cost, and adding the Pre-
mium to be insured in full.*

*Account of the Value of the Goods
were discharged by Appeal, what
been divided.*

N^o.

N. M--s's Policies made in

62 a 72
73 a 84
91 a 100

107

11 Packs Linnen Mk. 14703 : 3
12 ditto, ditto 18033 : 13
10 ditto Skins 6559 : 12½
30 Plates of Copper 723 : 15
1 Chest Linnen, ⅙ } 654 : 8
of Mk. 3927 : 1 }
Proportion of Charges 40

Mk. 40715 : 3½
2 per Cent. Comm. 814 : 4½

Mk. 41529 : 8

Prem. of £. 3649 : 4

a 34 s. 2 d. £. 3241 : 6 : 6
a 98 per Cent.

£. 3576 : 4 : 5 - 334 : 17 : 11

£. 3576 : 4 : 5

Pr. Ditto.

102 a 106

5 Chefts ⅙ of
Mk. 3927 : 1 - Mk. 3272 : 9
4 Casks } - - 2050 : 1
5 Packs } - -
1 ditto - - - 377 : 1
1 ditto - - - 253
Charges - - - 5 : 12

Mk. 5958 : 7

2 per Cent. Comm. 119 : 3

Mk. 6077 : 10

Prem. of 579 : 5 : 10

a 34 s. 2 d. £. 473 : 11 : 5
a 98 per Cent.

£. 567 : 14 : 2 - 94 : 2 : 9

567 : 14 : 2

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CASE
XXXVI.

of the Elisabeth and Sufanna, Capt. Tjert Bowes, which
has been insured, and what is left uninsured, and has

London, are declared.

Sums insured.

Insured £. 2750	- at 8 Guin ^s .	£. 231	} in London £. 3250
500	- at 9 ditto	47 : 10	
	$\frac{1}{2}$ per Cent.		
	Comm.	16 : 5	
	Policy	4 : 6	
On unin- sured	399 : 4	- a 10 per Cent.	£. 394 : 19 : 6
			39 : 18 : 5 in Leghorn
	£. 3649 : 4		226 : 17
		£. 334 : 17 : 11	

Insured £. 470	- a 15 $\frac{1}{4}$ p. Ct.	£. 74 :	6 in London	470 :
	$\frac{1}{2}$ per Cent.			
	Comm.	- 2 : 7		
On unin- sured	109 : 5 : 10	- a 16 $\frac{1}{4}$ per Ct.	17 : 15 : 3 in Leghorn	61 : 19
	£. 579 : 5 : 10		£. 94 : 2 : 9	

Cases of Insurances.

CASE
XXXVI.46 a 47
48 a 49
50 a 5944
45

Pr. C. L. and T. in London.

2 Casks Quills Mk. 269 : 5
 2 Packs Linnen - 1987 : 13
 10 Casks Copper - 9077 : 14½
 Certificate - 11 : 4
 2 per Cent. Comm. 226 : 11
 1 Chest Wire - 761 : 8
 1 Cask Copper - 448

Mk. 12782 : 7½

Prem. of 1153 : 7

a 34 s. 2 d. £. 997 : 13 : 2
 a 98 per Cent. £. 1130 : 6

132 : 12 : 10

1130 : 6 :

Pr. P. M. in London.

98 a 99

100 a 101
104 a 105
106 a 120

2 Casks Hogs-
 bristles - Mk. 472
 2 ditto Quills - 268 : 15
 2 ditto Linnen 3303 : 3
 14 ditto Copper 8231 : 8
 Certificate - 15 : 2
 2 per Cent. Comm. 245 : 8

Mk. 12536 : 14

Prem. of 1120 : 5 : 7

a 34 s. 2 d. £. 978 : 9 : 10
 a 10½ and 11
 per Cent. - 119 : 7 : 7

1097 : 17 : 5

Pr. D. V. in Amsterdam.

11 a 13 }
40 a 95 }

64 a 73

Mk. 42082 : 15
 Certificate - 46 : 8
 2 per Cent. Comm. 841 : 11

Mk. 5552 : 6

2 per Cent. 111 : 1

5663 : 7

Mk. 48634 : 9

Prem. of 4325 : 8 : 10

a 34 s. 2 d. £. 3795 : 17 : 4
 a 9½ and 15½
 per Cent. 443 : 1 : 3

4238 : 18 : 7

Cases of Insurances.

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CASE
XXXVI.

Insured £. 1025 - a 11 $\frac{1}{2}$ per Ct. £. 118: 2 in London £. 1025
On unin-
fured 128: 7 - 14: 10: 10 in Legborn 72: 19
£. 1153: 7 £. 132: 12: 10

Insured
Pr. P. M. £. 275 - a 11 per Ct. £. 30: 9: 6 in London £. 275
p. Ct. Amsterd.
Fl. 8500 or 772: 3: 7 - a 10 $\frac{1}{2}$ - 81: 1: 8 in Amsterd. 772: 3: 7
On unin-
fured - 73: 2 - 7: 16: 5 in Legborn 41: 10: 11
£. 1120: 5: 7 £. 119: 7: 7

Insured
Fl. 37000 £. 3363: 12: 8 - a 9 $\frac{1}{2}$ p. Ct. } £. 360: : 5 in Amsterd. 3363: 12: 8
On unin- }
fured 426: : 7 - a 9 $\frac{1}{2}$ in Legborn 293: 15
£. 3789: 13: 3
Fl. 5000 454: 14: 6 - a 15 $\frac{1}{2}$ - 70: 9: 10 in Amsterd. 454: 14: 6
Uninsured 81: 1: 1 - a 15 $\frac{1}{2}$ - 12: 11 in Legborn 46: 1: 4
£. 4325: 8: 10 £. 443: 1: 3

CASE
XXXVI. 27 a 63

58 a 61 }
85 a 16 }

Cases of Insurances.

Pr. H. D. in Amsterdam.
coft Hamb. B°. Mk. 32780
Certificate - 22 : 14
2 per Cent. Comm. 655 : 10
Mk. 33458 : 8

coft - - 8999 : 2
Certificate - - 3 : 12
2 per Cent. Comm. 180
Mk. 42641 : 6

Prem. of 3830 : 6 : 8 - $11\frac{1}{4}$ p.C. a 98 p.C.
a 34 s. 2 d. £. 3328 : 2 : 6
£. 3751 : 7 : 9 - 425 : 12

3753 : 14 : 6

3 a 4

1 a 2

Pr. V. R. and G. in Amsterdam.
Hamb. coft with
Comm. - Mk. 3172 : 2
2638
Mk. 5810 : 2

Prem. of 554 : 15 : 8 - $11\frac{1}{4}$ p.C. a 98 p.C.
a 34 s. 2 d. £. 453 : 9 : 6
£. 543 : 13 : 3 - 90 : 3 : 9

543 : 13 : 3

2 a 14

Pr. F. and L. in Leghorn.
Hamb. coft and
Comm. - Mk. 2040 : 8

Prem. of 177 : 6 : 9 - a 98 per Cent.
a 34 s. 2 d. £. 159 : 5 : 2
£. 173 : 15 : 9 - 14 : 10 : 7

173 : 15 : 9

On £. 15390 : : 4 to pay 98 per Cent. - - £. 15082 : 4 : 1

Cases of Insurances.

423

CASE
XXXVI.

Insured

Fl. 41850 £. 3804: 12 - a 11 $\frac{1}{2}$ - £. 422: 14: 8 in *Amsterd.* 3804: 12

On unin-

fured - 25: 14: 8 - a 11 $\frac{1}{2}$ - 2: 17: 4 in *Legborn* 14: 12: 8

£. 3830: 6: 8

£. 425: 12

Pr. V. and R. sepa-

rate £. 235: 6: 8 - a 10 $\frac{1}{2}$ - £. 24: 14: 1 } in *Amsterd.* 554: 15: 8
319: 9 a 20 $\frac{1}{2}$ - 65: 9: 8

£. 554: 15 8

£. 90: 3: 2

Pr. F. and L. - - - - - £. 177: 6: 9 in *Legborn* 177: 6: 9
as above 14: 12: 8

46: 1: 4

293: 15

41: 10: 11

72: 19

61: 19

226: 17

Dol. 4580

at 49 d.

amount to £. 935: 1: 8

£. 935: 1: 8

Is insured £. 14905: : 1

And there remains for *H. M.* in *Hamburg*, for the

Interest uninsured - - - - - 485: : 3

£. 15390: : 4

CASE
XXXVI.

Upon which Sum has been in the Whole received,

Of H. Z. per neat Sale of all the Goods £. 10793 : 4 : 11

Per one Year's Interest on £. 10500

Bonds

420

£. 11213 : 4 : 11

Deduct Premium on this Obli-

gation

£. 192 : 16 : 1

Per ditto on £. 400 with

Interest

16 : 4

Per $\frac{1}{2}$ per cent. Commission

of H. Z.

55 : 10 : 10

Per H. Z. Petty Charges

34 : 17 : 4

299 : 4 : 7

Delivered to us 109 East-India Bonds

£. 10900

By Cash

14 : 4

£. 10914 : 4

Repaid to M. at Bristol

3 : 12 : 4

£. 10910 : 8

Received

Cases of Insurances.

425

CASE
XXXVI.

Received farther by us,

6 Months Interest on £. 10900 a 2 per cent.	£. 218: :
6 Ditto - Ditto a 1½ per cent.	163: 10:
4 Months 7 Days 1500 a 3 per cent.	15: 17: 3
4 7 500	5: 5: 9
4 12 2000	21: 9: 4
4 13 £. 10900 900	9: 19: 2
4 14 4000	44: 12: :
4 14 2000	22: 6: :

£. 500: 19: 6

Deduct Brokerage of 109 a 1s. }
Discount a 2 }

16: 7: :

484: 12: 6

£. 11395: : 6

Of which we have farther deducted,

To the Account of the Proctor

Farrant -

£. 301: 11: 10

To the Solicitor *Webb* -

180

To private Disbursements, by *N. M.*

81: 6

To ditto, petty Charges -

28: 14

To our Commission, 2½ per cent.

284: 18

To Interest of £. 450, advanced at

Amsterdam -

16: 17: 6

To *H. M.* in *Hamburg* for his

Trouble and Charges -

50

943: 7: 4

So there is saved in the Whole to be
divided - -

Neat £. 10451: 13: 2

OF

CASE
XXXVI.

Of which we made good,

To the Heirs of <i>P--d W.</i> in <i>Amsterdam</i> , for a Parcel of <i>Nurenbergh</i> Toys, and to <i>J. S.</i> for a Parcel of Glaffes, which are not com- prehended in the above general Account	£. 76 : 4
To the Owners of the Goods first released, charged too much	320 : 13
To the Owners of the Ship	101 : 7
To the Owners of the Ship for Freight of Goods released since	159
	657 : 4
Remain	£. 9794 : 9 : 2

N°. T. Which proportioned on the £. 15390, makes 63 *per cent.* and has been made good to all the Underwriters and Concerneds.

N°. U. In Justification of the foregoing Division, it may be necessary to shew a Reason why the Goods (which were all publicly sold under their known Marks, and had sustained Damages, some more some less, according to their Kinds) were not particularly applied to their respective Proprietors. Whereto it must be answered, That it was because, in case the Appeal had been lost, there would have been no other Way to recover the Charges, than upon the original Value or prime Cost of the Goods altogether, including therein the Premium paid for Insurance; and in that Conformity to have made the Insurers pay their Proportions for the Sums respectively underwrote by them, and the Owners to bear the Part which remained uninsured. And therefore there could not be now any Way to divide the Salvage more equitably than in the Manner it is stated above; which comes out at 63 *per cent.* and which all the Insurers approved of and accepted with Thanks: As did likewise *H. M.* at *Hamburg* for the uninsured Interest of his Friends in *Spain*, who, as he particularly acknowledged, received by this Distribution £. 305 : 11, which they had never expected.

C O N-

CONCLUSION.

As many of the Points discussed in the preceding Pages have never been subjected to the Examination of the Public, we do not doubt but that some Persons of Capacity and Experience in Mercantile Affairs will be induced to weigh and consider them maturely: And from such alone it is, that we should be glad to be informed where we have been in the wrong, provided they should find us so. For if the Public are but led into a true Way of thinking and judging, consonant to Reason, Justice, and Equity, it will be a Matter of Indifference to us by what Means they attained to it, or who is their Guide.

We shall not scruple to acknowledge, that as plain as many of these Points seem to be, we have more than once changed our Sentiments in regard to several of them; and notwithstanding the major Part of them, in the Manner they are now stated, may appear to be so many obvious Truths, hardly worth apprizing the Public of, (which if it should in reality prove so, we should not at all be displeased at it) we would still recommend to all such public-spirited Merchants, who would take a Pleasure in doing something towards promoting the Good of the whole Body of their Profession, and who have Opportunities of seeing and experiencing Transactions of the like Nature, to proceed in the Plan we have here chalked out, and set down their Observations with the same Candour that we have done: And by the Diversity of Cases, as well as of the Intricacies and Difficulties resulting therefrom, which Time might present to their View, they would find that a great deal more remains unobserved than has been touched on already; and that the longer we apply ourselves to this Practice of Observation, the more we shall be convinced that we knew but little before.

If we look back to the Suits at Law which have been carried on for many Years past about these Affairs, and could at the same Time be let into a true Detail of their Merits, we should find that most of them have arisen from our not having

Cases of Insurances.

given ourselves the Trouble to explain our own Meaning, and the accustomary Methods of such Dealings wherein we were respectively engaged: And we are thoroughly perswaded that the Lawyers of most Eminence will allow, that such Matters as are contained in the foregoing Cases, may be much better decided by experienced Merchants, and good Accomptants, than by Persons who have studied the Law only.

SOME

SOME
BRIEF HINTS
TO

Merchants and Insurers,

*Concerning the RISKS to which TRADE and NAVIGATION
is exposed in Time of WAR.*

AFTER having ventured in the foregoing *Essay on Insurances*, and in our Remarks on the Cases annexed to it, to point out several Things, wherein the received Ordinances, Statutes, and Customs, seem to us somewhat deficient, we will make bold to add a few Pieces, wrote by great Lawyers and Statesmen on the Freedom of Navigation; and give some Mercantile Hints which may also deserve Consideration hereafter.

We shall begin with that remarkable Piece which was published by the Court of *Prussia*, concerning the Seizure and Detention of neutral Ships during the last War, and *England's* Answer to it. And here, leaving the different Explanations of Treaties and the Law of Nations, made by those great Men, to stand upon their own Bottom, we must observe, that if the *Prussian* Merchants had been ingenuous enough to lay open entirely how their Risks were connected with Insurances in *England* and other Parts, that great and wise Prince would doubtless have considered many of them in a different Light. For if his *Prussian* Majesty had been informed that the greatest Part of the Adventures made by the *Silesia* Merchants were insured in *England*, and that the Charges of reclaiming them, and the Losses sustained by their Detention, were paid by the *English* Insurers, it would naturally have occurred to him, that the Retention of the *Silesia* Loan was in so far but with-holding from one *Englishman*

H h h 2

what

Some brief Hints

what was to be paid to another *Englishman*. It is notorious to all the Mercantile World, that as the *English* Insurers pay more readily and generously than any others, most Insurances are done in *England*: The *English* Insurers, therefore, must undoubtedly have bore the greatest Share in those Losses; and what was not insured in *England*, must have been done at *Amsterdam*, *Hamburg*, or *Cadiz*: For it is well known that in *Silesia* and *Stettin* there can be no Insurance made for any Sums, and that the *Silesia* Merchants are not such bold Adventurers as to run those Risks.

The Charges of obtaining Restitution of the Ships and Goods would in many Cases not have amounted to half so much, had not the Concerned been so backward or dilatory in sending the necessary Proofs, and negligent in remitting Money, or procuring Credit for it, to prosecute their Claims. Those especially who relied much upon Distinctions which they pretended ought to be paid to their Shares, did more Harm than Good to the common Cause: For by their tying up too much the Hands of the People here, who had the Care of soliciting the Restitution of their Goods, the prudent Mercantile Maxim in such Cases, rather to give away a little, than to push Things to Extremity, could not be so immediately embraced.

Out of the Number of Ships contained in this List, we shall annex to it the Particulars of one named the *Anne Elizabeth*, Capt. *Daniel Schultz*, whereof the *English* Answer says, That by impartial Arbitrators the Damages given amounted to 2801 *l.* 12 *s.* 1 *d.* whereby Merchants will be fully satisfied, that all the Allowances were made here that could be reasonably expected. But perhaps it was not rightly explained to the Commission established at *Berlin* how it came to pass that Capt. *Schultz* did not receive forthwith his Part of those Damages allowed: And as we know the whole Affair, having been one of the Arbitrators, we will here give the Reason, *viz.* That after the Captors were condemned to pay the above Sum of 2801 *l.* 12 *s.* 1 *d.* their Securities (it was an *English* Privateer that brought her in) appeared somewhat doubtful, and insisted upon having the Cause re-heard before the Lords; whereupon the Persons who

who acted for the Claimants having been all along out of Pocket for these Charges, consented to a Composition, and accepted of what they could get, since from their Principals they never had obtained any Remittances on Account of their Disbursements.

It is true, that the Charges of obtaining Restitution of these detained Ships and Cargoes ran very high, and especially of those neutral ones which were loaded at *Hamburg* by the Generality of Commerce, the Cargoes of some of which belonged perhaps to fifty or an Hundred different Owners, each of whom necessarily behoved to make out the Proof of his Property; for which he who had but one Bale must pay the same Expences as if he had had an Hundred Bales for his Account. It must needs therefore run high: And although there may be Reason enough to complain of Extravagancy in many Cases, still it cannot be denied that in our Court of Admiralty the usual Way in former Wars was kept up in its Proceedings during the last: And without depreciating the Merit and Learning of the great Men employed in the *Prussian* Court of Enquiry, we Merchants must be sensible that they could be no Judges whether there was any just Cause of Seizure or not, since they had not all the Ships Papers. And when we consider the Number of People who loaded in such Ships, we can hardly doubt that there should be some who could not prove the Property to be neutral.

Though it cannot be expected from Merchants that they should study thoroughly all the Laws of Nations, yet we may suppose that most of them know something of the Contents of Treaties of Commerce, and we believe that hardly any could be so ignorant, as not to know that there was a Difference in the Treaties of Commerce between *England* and *Denmark* and *Sweden*, and between *England* and *Holland*, and *England* and *France* and *Spain*, and that only between the four last, the Rule "of free Ships making free Goods, though belonging to Enemies, except contraband," had been reciprocally established. Farther, every Merchant who knew any Thing of what passed in former Times of War, must naturally conclude that it was venturing too much, to rely wholly upon the Stipulations made in Treaties, which in Wars of any Length have been never strictly kept to. Hence, when Merchants intend to send
Goods

Some brief Hints

Goods by Sea for their own Account, to any Country, in Time of War, the chief Thing which determines them is the Premium asked for the Insurance: And the Insurers, notwithstanding they are not ignorant to what Vexations Shipping is generally exposed in Times of War, will be tempted by an high Premium to expose themselves to all Chances, and often rely more upon the Width of the Sea, than upon the Favour they have to expect from Treaties.

For the Use of Merchants who may be desirous to know what passed with regard to Navigation, in former Wars, we have preserved for them, and here subjoined some remarkable Passages which we met with in searching after it.

These consist first of Extracts of Letters written by that great Statesman *John De Witt*, Pensionary of *Holland*, and others received from the *Dutch* Ambassadors employed at the Courts of *France* and *England* during his Ministry, which have been published at the *Hague* 17 $\frac{1}{4}$, in four Parts in Quarto. It appears by them that this great Minister, being sensible that *Holland's* Wealth depended chiefly upon keeping Peace, and having a free and unmolested Navigation from and to all Parts, laboured hard to obtain from *England* and *France*, by particular Treaties of Commerce, the Concession, that free Ships should give Freedom to all Goods, even those belonging to Enemies, except Contraband.

His Letters wrote to, and those received from *William Boreel*, in 16 $\frac{1}{4}$, (Part I. Page 77, 78) shew that *France*, by a provisional Treaty made in 1646, and by a Declaration of the *French* King in 1651, having allowed this Rule to the *Dutch*, were the first who deviated from it. Mr. Boreel writes, (Page 66, 68) "They now say that their Enemies ought not to be protected nor served by Ships of the States, in carrying their Goods: That such Goods would be taken out of the *Dutch* Ships, and confiscated as good Prize." He adds, "and the *French* may perhaps even fall upon maintaining their old Maxim, *Que la Robe d'Ennemi confisque celle d'Ami*."

His

His Letters wrote to, and those received from *William Nieupoort*, 1656, (Part III. Pag. 226, 230, 332, 333, 340, 426, 427) shew that the *Dutch* never could obtain from *England*, during the Time of *Oliver Cromwell*, that this Rule should be allowed; and it seems that *England* considering herself to be the first of the Maritime Powers, thought it more political that *Holland* should always remain in the same Interest, and go along with her.

We find in *Aistma*, 36th Book of State Affairs and of War, Anno 1656, that upon Mr. *Nieupoort*'s so often-repeated Sollicitations about the Marine Treaty, the Answer given by the *English* was, That the Demand of "free Ships, free Goods," and Passport to their Form, was very unjust; and the Reasons they alledged are as strong as any that have been made Use of since.

But in King *Charles* the Second's Reign this Rule was allowed by the Treaty of Marine concluded the 28th of June, 1667; and on this Occasion Sir *William Temple*, in a Letter of the 21st of May, 1667, to my Lord Ambassador *Coventry*, writes, "Mr. *Godolphin* assured me that all Parts of the Treaty of Commerce are so much to our Desire and Advantage, that he hoped to see many a rich Man in *England* by it." It would seem that Mr. *Godolphin*'s Maxim was, that *England* should have nothing so much in View as a free Navigation for her Merchants. And indeed this is certainly of the greatest Consequence; but the Way to have made it effectual would have been to be always watchful, and keep a naval Power superior to that of our Neighbours, and not to suffer, at the Time of treating, Part of our naval Strength to be surprized and burnt at Chatham, by the then vigilant and powerful Dutch Fleet: By which Action, it seems, they forwarded the Conclusion of such a Treaty of Marine and Peace, as they had long desired in vain.

But as Merchants it is not so much our Business to enquire whether it was good Policy to make such Treaties, as to know how long they were strictly kept.

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J. Meerman, one of the *Dutch* Ambassadors in *London*, in a Letter to the Pensionary, dated *Feb. 1, 1668*, says, That having complained to the King that the Privateers of *Ostend*, with Commissions from *Spain*, disturbed their Navigation, his Majesty answered, that he had also heard of it, and considered it as Acts of Pirates; and that he would give Orders, if any of his Subjects should be found on board of those Privateers, to have them hanged. Mr. Meerman farther says, "It would seem as if these Privateers were not at all acquainted with the 14th Article of the Treaty of *Marque* concluded by their High Mightinesses with the King of *Spain*, which says, *that free Ships shall make free Goods.*"

In King *William's* Reign, when *England* and *Holland* were allied in a War against *France*, they went some Steps farther; for their Declarations and Notifications made to all Courts inform us, that they would not permit any neutral Nation to navigate and trade with *France* at all.

It doth not appear that in this last War *England* went farther beyond the Bounds of Neutrality than formerly. History will afford Examples enough, that whatever Power gets the better at Sea or Land in Time of War, commonly makes the most of it; the fair Trader always suffered by the sinister Dealings of the unfair ones; and so much as one Side studied to conceal Truths, the other studied to discover them.

By an Extract out of Sir *Leonine Jenkins*, hereunto subjoined, neutral Merchants will see, that during the War *Anno 1676*, some used to behave in the same Manner, and that the same Things were practised, and the same Constructions made in our Courts then, as in the last War. We do not find that in *France* or *Spain* they have been dealt with much better, although they might justly have expected more Favour, since those Crowns having hardly any Shipping of their own left, wherewith to carry on Trade, ought in good Policy to have set the Example of letting all neutral Shipping pass unmolested, which would have been much to their Advantage, if they who remained

remained the Masters of the Sea would have given the same Freedom.

But might not those who fought the Battles ask, What signifies our being Masters at Sea, if we shall not have Liberty to stop Ships from serving our Enemy? And when we examine to the Bottom of the Thing, it appears very evident, that Sea-Battles are not fought so much to kill People, as to be Masters of Trade, whereby People live; and by stopping their Supplies, to compel our Enemies in the End to live in Friendship with us.

We will conclude this Introduction by a few Rules to be kept in Mind by Merchants and Insurers, which are:

1. That every one should avoid all such Dealings whereby the State in which he lives may be exposed to suffer more than he in private can get by them.

2. That it is dangerous to concern ourselves with Numbers of People, and in Ships whereof we know not all the Circumstances.

3. That such States as enjoy a Neutrality, ought not to permit their Subjects to lend their Names for trifling Commissions; which always will cause Interruption.

4. That by keeping themselves within Bounds, neutral States will raise less Suspicion; and one, two, or three Merchants, who are able to fit out a whole Ship and Cargo fairly and solely upon their own Account, will add more Wealth to the State, than an hundred others, who merely serve as Factors, and lend their Names to others; besides, that in Cases of Detention, it will be less expensive, and less difficult to get out of the Scrape.

5. That an Insurer upon a Cargo which he knows wholly to be the Concern of a few Persons, may rely more upon being cleared soon, and so sign at a cheaper Premium.

6. That Merchants and Insurers may trust more to obtain Freedom of Goods which justly and fairly are their own Property, than of others that are not so, under what great Patronage, or with what Art, soever they may be cloaked.

EXPO-

E X P O S I T I O N
OF THE
M O T I V E S,

FOUNDED UPON

The universally-received LAWS of NATIONS,

Which have determined the King (of PRUSSIA) upon the repeated Instances of his Subjects trading by Sea, to lay an Attachment upon the Capital Funds, which His Majesty had promised to reimburse to the Subjects of *Great-Britain*, in Virtue of the Peace-Treaties of *Breslau* and *Dresden*;

AND TO PROCURE

Out of the said Capitals, to his said Subjects, an Indemnity for the Losses which they have sustained by the Depredations and Violences of the *English* Privateers, exercised upon them on the High Seas.

Memorial of Mr. MICHELL, Secretary to the Legation of His Majesty the King of PRUSSIA: Presented to the Duke of NEWCASTLE.

IT is by Order of the King his Master, that the undersigned Secretary to the Legation of his Majesty the King of *Prussia*, is obliged to remind your Excellency of the pressing Solicitations employed by himself and Predecessor, at several Times, for obtaining, from the Equity, and through the Justice, of the Ministry of this Court, the Satisfaction which the *Prussian* Merchants have demanded, of being indemnified for the Violences and Depredations they have sustained from some of the *English* Privateers, during the last War. Your

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Excellency will remember, that these Merchants had, some their Ships taken from them, some their Effects forced away; others had them detained; and altho' it was evidently made appear, that none of them dealt in Contraband Trade, they have not hitherto been able to obtain any Redress, neither from the *English* Tribunals to whom they applied, nor from the Government, before which they laid their Complaints: And that, by a singularly-strange Contradiction, when even those Tribunals found no specious Pretext for confiscating their Ships and Effects, and consequently discovered the Injustice of the Prize, they nevertheless did not fail to condemn the Proprietors in Costs, to the Behoof of the Privateers, and levyable upon the Capture.

THE Laws of Equity ought incontestably to be the same for all Nations; and an *Englishman* ought to expect the finding a Sanctuary at *Berlin*, in the Justice of its Tribunals, against the Violence of their Subjects, the same as a *Prussian* ought to find it at *London*, against any illegal Procedure from theirs. It is upon this Principle, that good Faith and mutual Commerce stand established between Nation and Nation: It is also upon this very Principle, that the Merchants of *Europe* traffic with their Neighbours, and that the *English* Nation carries on so advantageous a Commerce. All Countries look on these Ties of Equity as sacred and inviolable; and they respect them at Home, that they may receive the Benefit of them Abroad, whenever the Necessity comes to exist, of their having recourse to them.

HIS Majesty believed, that, with a Nation so full of noble Sentiments, so generous, as the *English* one, it would be no Difficulty to obtain for his Subjects the Satisfaction that was due to them; and your Excellency will remember, that, in case of a Refusal, the Intimation was not omitted, that his Majesty, the King of *Prussia*, would find himself obliged (tho' with Regret) to seize the Capital Funds for which the Dutchy of *Silesia* stood mortgaged to the *English*; especially as his Majesty had no other Means of indemnifying his Subjects.

THE Intentions of the King my Master are pure: His Majesty was determined to fulfil, with all Integrity, the Engagements he has contracted with the *English* Nation, and acquit the Debts

Debts incumbent on him; but he is determined at the same Time to make good to his Subjects the Protection which he owes them.

THAT his Majesty might precipitate nothing in an Affair of this Nature, and in order to afford the *English* Government Time enough for Reflection, his Majesty continued discharging the *Silesia* Loan until Payment of the last Term; but when his Majesty saw that neither the Equity of his Demands, that neither Time, Reasons, nor repeated Importunities, produced any Effect, in Favour of the *Prussian* Merchants, the King thought himself obliged to have recourse to the last Measure that remained in his Power, that of defalcating from the Money due to the *English*, the Sum which his Subjects demanded for their Indemnification.

THE same Law that obliges us to the fair Dealing of paying our Debts, authorizes us to exact the same Measure of Justice from our Debtors. What a singularly-strange Institution of Right would that be, that should regulate all in Favour of one Side, and nothing in Favour of the other? In this Affair, however, the Point in Agitation is not even what is owing from the *English* to the *Prussians*, but what is forcibly with-held from them. If it is but just to pay one's Debts, it is yet more so to repair the Damages one has occasioned by one's own Fault, and with premeditated Design.

AFTER Reasons so strong, after having, in vain, demanded Reparation from those who alone could make it, is there any Colour whatever for pretending that the King should give up his own Subjects? And could he do it, even if he would? He owes the last Term to the *English*; he stops it, and, after having acquainted the *British* Government, upon all Occasions, of the Measures his Majesty could not but indispensably take, he appointed a Commission to judge, with Impartiality, and with a rigid Exactness, the Pretensions of the *Prussian* Merchants. At the Head of this Commission too his Majesty placed a Man, whom to name, suffices to sanctify the whole Procedure. The High Chancellor (*Cocceii*) then, three Ministers of State, and several Counsellors of Justice, have examined the Claims of the Merchants, and liquidated their just Amount.

This

Exposition of the Motives, &c.

THIS Commission having terminated this Affair, the Under-signer has the Honour to present, enclosed here-with, to your Excellency, Copies of the Decrees given upon the different Claims of the *Prussian* Subjects, upon that of each Merchant separately; whence it results, that of 239,850 Crowns, which those Merchants esteemed due to them, the Commission has adjudged to them no more than 159,486 Crowns, 20 Gr. Principal, and 33,283 Crowns Interest, at the Rate of 6 *per Cent*.

THO' his Majesty has all the Reason to be persuaded, that the said Commission has proceeded according to the Forms of the most impartial Justice, his Majesty has, nevertheless, ordered the Under-signer to declare, in the present Memorial, that his Majesty is disposed to have any contested Facts examined afresh by the said Commission, if any Officers, or *English* Privateers, who shall believe themselves wronged thereby, thinks proper to interfere therein, or to have the Judgment reformed, in case the Pleas of the adverse Party, so suing, should be found valid.

THE King fixes, for the Exhibition of these Pleas, the Term of three Months, reckoning from the Day of this Declaration. As the List of the several Captures annex'd to this Memorial contains the Names of those who made them, his Majesty refers it to the good Pleasure of the *British* Government, in what Manner it shall be proper to inform the Parties of the Judgment pronounced, that they may enter their Pleas against it, according to Right. If, nevertheless, the said Term lapses without any one's interfering in their own Vindication, his Majesty will abide by the Decree of his Council, and in pursuance thereof, will order the Defalcation of the Sum adjudged to his Subjects, including the Interest thereon at 6 *per Cent*. until the 10th of *July* of the current Year; which said Defalcation, so ordered from the Money due to the *English*, amounts to 194,725 *Brandenburg* Crowns, 4 Gr. and 5 Deniers, and is to be applied to the Indemnification of the *Prussian* Merchants. His Majesty at the same Time declares, that he is ready to order Remittance to be made to the Commissioners of the *Silesia* Loan, of the Residue of what is owing upon that Claim, both on account of the Capital,

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tal, and of the Interest growing thereon, at the Rate of 7 per Cent. to the tenth of July of the present Year. *Always provided,* that the said Commissioners shall issue an authentic Release for the said Principal and Interest.

IN Case that, against all Expectation, they shall in *England* refuse to come into this so equitable a Disposition, I am to declare to your Excellency, that the King will order the said Sum to be judicially delivered to his Chamber of Justice in *Berlin*, there to remain in Deposit, till it shall please the Proprietors to draw it out by furnishing proper Discharges: and as the Growth of the Interest naturally ceases after this Procedure, his Majesty expressly protests against being thence-forward accountable for any; and in Virtue of this authentic Protest, his Majesty holds the Debt upon the *Silesia* Mortgage entirely extinguished, and that Dutchy fully exonerated from all Obligations with regard to it.

London, Nov. 23, 1752.

Signed

MICHELL.

S E C-

SECTION I.

WAR having been kindled between the *English* Nation on one Side, and the Kings of *France* and of *Spain* on the other; the King, for the better Security of the Commerce of his Subjects, took the Precaution of addressing to the *Sieur Andrié*, his Minister at *London*, an Order bearing Date the 14th of *April*, 1744, by which he charges him,

To inform himself from the *English* Ministry, of what specifically was held contraband with them, and whether Grain, Timber, Planks, Hemp, Linseed, Linnen, and the like, were comprehended therein, that the King might advise his Subjects thereof, and give them the necessary Instructions, upon the Manner in which they should continue their Commerce.

SECTION II.

THE Declaration, which the Lord *Carteret* made to the *Sieur Andrié*, in the Name of his Majesty the King of *Great-Britain*, and of which he gave Advice in his Relation of the 18th of *May*, 1744, imports,

That the King's Flag should be respected equally with that of other Powers in the Alliance of Great-Britain, excepting only such Vessels as should carry warlike Stores to the Enemies of the British Nation.

SECTION III.

THE King having required a more explicit Declaration upon all the Subject Matters contained in the Memorial which his Minister had presented thereon, the said *Sieur Andrié* in his Relation of the 29th of *May* and 9th of *June* advised,

THAT the Lord *Carteret*, Secretary of State, had repeatedly assured him, *N. B.* in the Name of the King of *Great-Britain*, that NONE OF THOSE ARTICLES, specified in the Order given to the said *Sieur Andrié*, such as *Wood* and other Materials for
the

the Construction of Ships, neither also Cordage, Sails, Hemp, Linseed, and the like, were reputed contraband: That the *English* Nation would carefully respect the Flag, and Subjects of the King; and that the Commerce of these last should not in the least be molested, *provided they abstained from carrying any WAR-LIKE STORES to the Enemies of Great-Britain (which Stores are, NB. NB. specified in all the Treaties between the Maritime Powers) nor any VICTUALLING STORES to Places besieged, or blockaded by the said Nation.*

THAT, for the rest, the Commerce should remain free to the Neutral Powers, N. B. *upon the same Footing, as in Times of Peace.*

SECTION IV.

IT is proper to remark here, that when the said *Sieur Andrié* required from Lord *Carteret* a Declaration thereon in Writing, he answered him both the Times, he spoke to him of it, that it was not the Practice in *England*.

SECTION V.

LORD *Carteret* having specifically referred, for what is called contraband, to the Treaties concluded between the Maritime Powers, the King, super-abundantly, ordered the Treaties, concluded in 1674 between *England* and *Holland*, to be examined; and it was found in them, that all the Particulars, which Lord *Carteret* had declared to the *Sieur Andrié* to be contraband, or non-contraband, were specifically set forth; for in the III^d Article of the said Treaty are named as Contraband:

ARMS, Bombs, and all that belongs to them, Powder, Fire-Arms, Mortars, Balls, Sabres, Lances, Petards, Arquebuses, Grenadoes, Salt-petre, Cuirasses, and other Accoutrements of War; as also Soldiers, Horses, Saddles, &c.

AND by the IVth Article, in the Number of Non-contraband are comprized,

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CLOTHS, Wool, *Flax*, Cloathing, Shirts, Tin, Lead, Coals, all Sorts of *Grain*, Tobacco, Spice, Salt Meat, Cheefe, Butter, Wine, Salt, and all Sorts of Provisions, Mafts, *Planks*, *Timber*, and other *Wood*, fitting, *N.B.* for building, and repairing Ships, and, in general, *all Merchandize* not comprehended in the preceding Description; infomuch, that it is permitted to Allies, to transport these last Articles of Merchandize to the Enemies Places, excepting only, *N.B.* fuch as should be actually under the Circumstances of a Siege, or Blockade.

It is certain, that in the preceding Wars the *English* Nation held for Contraband *precisely no other Articles but what were for the direct Use of War.*

SECTION VI.

IN Consequence of this Declaration, which the King communicated to his Subjects, he gave them Direction that, in WARLIKE STORES excepted, they might freely trade as in Time of Peace.

SECTION VII.

THE *English* Privateers, for more than one Year, respected the *Prussian* Flag, and suffered to pass without Hindrance all the Vessels of that Nation, even those which were loaded with *Plank*.

It was not till *October*, 1745, that, for the first Time, they took it into their Heads to stop Vessels loaded with *Plank* for *France*, and would not let any *Timber* pass: but the Depredation was at length pushed so far, that the Privateers, although the said Vessels were loaded with no other than Merchandize visibly free, and that their Commanders assured them of it, by the Exhibition of their sailing Orders, Bills of Lading, and Certificates, not content with stopping them, they took from them all that they found for their Purpose, and carried them, forcibly, into their Ports.

AMONGST

AMONGST others it happened, that a Privateer having taken a Ship belonging to *Emden*, loaded with Salt, not satisfied with plundering the Cargo, and the Crew of their Wearing Apparel, he basely misused and beat them.

SECTION VIII.

THE King, solicited by the repeated Complaints of his Subjects, having on this Occasion ordered a Number of Representations to be made, as well by the said *Sieur Andrie*, as by the *Sieur Michell*, his Secretary to the Embassy, Lord *Chesterfield*, then Secretary of State, answered in Writing of the Date of ^{5 January, 1747}
_{26 December, 1746};

THAT the King of *Great-Britain*, willing to omit no Occasion of manifesting all the Regard he had for the King of *Prussia*, made no Difficulty of declaring, that he would offer no Hindrance to the Navigation of the Subjects of *Prussia*, so long as they should exercise their Commerce in an allowable Way, and should conform to the ancient Customs established and received between Neutral Powers.

SECTION IX.

AND when, on the Occasion of the Capture of a *Dutch Ship*, called the *Three Sisters*, the Secretary *Michell* made fresh Representations, and demanded Satisfaction thereon of Lord *Chesterfield*; that Lord declared to him on the $\frac{11}{11}$ Sept. 1747,

THAT the Intention of *Great-Britain* was, *N. B.* to keep to the Declaration of the Lord *Carteret*, made, *N. B.* in the Name of this *Britannic Majesty* to the said *Sieur Andrie* at the Beginning of the War.

SECTION X.

THINGS however remained on the Foot simply of these Declarations, without the least Satisfaction having been given, either for the first Damages, and the Insolence of the Privateers, or for the Depredations which went on encreasing in the Years 1747 and 1748, although the King had at several Times ordered

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dered his Declaration to be made, that he would make accountable for them those Capital Funds of the *English* which he had engaged himself to pay them, in Acquittal of *Silesia*, by the Treaties of Peace of *Breslau* and *Dresden*; and that he would out of them indemnify his Subjects.

SECTION XI.

THIS is what, at length, has constrained the King to yield to the pressing Instances, and to the repeated Solicitation of his Subjects, to take their Cause effectually in Hand, to employ to that End those Means dictated as well by Reason, as by the Law of Nations; and, in a Word, to repair his Subjects Damages out of the Capital Funds of the *English* in his Hands.

SECTION XII.

BUT that the whole Universe may be plainly convinced of the unjustifiable and illegal Procedure of the *English* Privateers, the following Questions shall be examined here, which are relative to the Grievances of the *Prussian* Subjects, and which will serve to state them in their full Light. To wit,

- I. *Whether the English Privateers had a Right to stop the Prussian Vessels on the high Seas, to search them, and, notwithstanding the Exhibition of their sailing Orders, and Bills of Lading, by which they proved they had no Contraband on Board, to carry them forcibly into the Ports of England?*
- II. *Whether the said English Privateers were warranted to stop, on the high Seas, the Prussian Vessels, under the Pretext, that there was Merchandize on board them, that belonged to the Enemies of the British Nation? And whether they had a Right to carry them into their Ports, and thereby retard the Course of their Navigation?*
- III. *Whether the said Privateers had a Right to stop, on the high Seas, other Neutral Ships, such as those of Sweden, Holland,*

Holland, Denmark, Hamborough, &c. N. B. freighted, in the Whole, or in Part, by Prussian Subjects, to carry them into England, to detain them whole Years, and disturb in this Manner the Trade of the Prussian Subjects?

IV. *Whether the Sorts of Merchandize, loaden upon Prussian Bottoms, or on Neutral Ones, by the Subjects of Prussia, and which were confiscated from them, in Virtue of the unjust Decrees given against them by the English Tribunals, were really Contraband?*

V. *Whether the English Ministry had a Right to refer to a Tribunal of Marine, established in England, the Decision of Differences of the Nature of those examined in the preceding Questions, when those Differences are in Agitation between two free Powers; and to want to oblige the aggrieved Power, who demands Satisfaction, to abide by the Decisions of such a Tribunal?*

VI. *Whether in fine, on the other Hand, the King is not fully justifiable, in his giving Way to the Attachment, which his Subjects have requested him to lay on the English Capital Funds, stipulated by the Peace-Treaties of Bresslau and Dresden, and which are in his Hands, so as he may procure to his Subjects their Indemnity, and a suitable Reparation for the Violences exercised against them by the English Privateers, in despite of the Law of Nations, and notwithstanding the formal Declarations repeated by the English Ministry: and whether the King has not a Right to indemnify his Subjects out of those Capitals, seeing that Justice has been so long denied them, which they were so well grounded to demand?*

SECTION XIII.

Examination of the 1st Question.

WHETHER the English Privateers had a Right to stop the Prussian Vessels on the high Seas, to search them, and, notwithstanding the Exhibition of their sailing Orders, and
Bills

Exposition of the Motives, &c.

Bills of Lading, by which they proved they had no Contraband on Board, to carry them forcibly into the Ports of England?

A. IT appears by the Appendix'd Piece marked A, that Eighteen *Prussian* Ships have been stopped by *English* Privateers, in a Manner equally unjustifiable and illegal, and that they were forcibly carried into *England*. This Proceedure is visibly contrary to the Law of Nature and of Nations; according to which, it stands a Principle universally acknowledged by all reasonable Countries, that the Sea is in the Number of those Things called *res nullius*, or of which Man cannot make himself Master.

§. 5. *Inst. De rer. divis.*

If then no one can attribute to himself the Sovereignty and Property of the Sea, it naturally follows that the Use of it is common to all Men, and that no one has a Right to debar another of it.

L. 2. § 1. *ff. De rer. div.*

§ 1. *Inst. eodem.*

L. 13. § *fin.* *ff. De injur.*

L. 3. § 1. *Ne quid in loco public.*

L. 13. *ff. Comm. præd.*

ACCORDING to these Principles, founded upon Reason, all Powers have an equal Right to navigate freely, and to trade by Sea.

L. 4. § 1. *De rer. divis.*

§ 1. *Inst. eodem.*

d. L. 13. § *fin.*

L. 1. § 1. *De acquir. rerum dominio.*

L. 2. § 9. *ff. Ne quid in loco public.*

L. 13. *ff. Commun. præd.*

SECTION XIV.

WITHOUT however even having recourse to the *Roman* Civilians (by whom the Law of Nature and Nations was perfectly understood) one might easily maintain this Proposition by an infinite Number of Authorities and Examples.

Vid. Grot. in tractatu De mare libero.

BUT this would be superfluous, since the *English* Nation itself has availed itself of it in several Circumstances. When the *Spanish* Envoy *Mendoza* complained to *Queen Elizabeth*, that *English* Ships presumed to trade in the *Indian* Seas, that *Queen* gave for Answer,

That she saw no Reason, that could exclude her, or other Nations, from navigating to the Indies, since she did not acknowledge any Prerogative that Spain might claim to that Effect, and much less any Right in it to prescribe Laws to those who owed it no Obedience, or to debar them Trade. That the English navigated on the Ocean, the Use of which was like that of the Air, common to all Men, and which, by the very Nature of it, could not fall within the Possession or Property of any one.

SECTION XV.

IN Consequence of this Principle, founded upon the Law of Nature and of Nations, the *English* Nation has, in several Conjunctions, in which their Ships have been stopped, searched, and seized, warmly protested against, and taxed such Proceedings of being a manifest Violation of the Law of Nations.

THERE is no Doubt, but that the *English* Nation will recall to Mind the great Stir it made, when the King of *Sweden*, in a War against *Russia*, laid an Embargo on all the *English* Vessels, that were bound for the Ports of *Livonia*, and occasioned thereby a considerable Prejudice to their Trade. Then it was they appealed loudly to the Laws of Nations.

ACCORDING

ACCORDING to which, they maintained, that it was allowable for the Subjects of *England* to trade with all States, who were, as to them, neutral, although they might be involved in War with other Powers, also neutral, as to them; in like Manner as the *English* permitted the Subjects of *Sweden* to navigate and trade with all other States, and all other Ports, that were neutral as to *Sweden*, although involved in War with *England*; which was evident, in this very Circumstance, that they, at that Time, permitted the Subjects of *Sweden* to trade freely with *France* and *Spain*, which were, at that Time, actually in open War with *England*.

THIS Example is so much the more favourable to the Subjects of *Prussia*, in that those *Swedish* Vessels were, for the most Part, loaded with Contraband, and that they carried Things to such Lengths, as to convey even Ships of War to the Enemies.

SECTION XVI.

WHAT a long, bloody, and expensive War has not *England* maintained against *Spain*, for the Defence of the Liberty of its Trade and Navigation, because the *Spaniards* searched their Ships, in the *American* Seas, for Prevention of Contraband Trade?

IN the Declaration of War of the 30th of *October*, 1739, *England*, after a Deduction of its Grievances against *Spain*, thus explains itself:

THAT all these Grievances took their Rise from *Spain* attributing to itself, against all Reason, the Right of stopping and searching the *English* Ships; a Pretension contrary to the Right of Navigation, which belonged equally to the *English*, as well as to the *Spaniards*, and consequently contrary to the Law of Nations.

UPON this Foundation, *England*, in its above Declaration of War, taxes their Pretension with being ill-grounded, unjust, dan-

dangerous, so as to affect all the Powers of *Europe*; and, in the Memorial, which afterwards appeared on its Behalf, it is maintained, that *Spain* ought to content itself with simply the Presentation to be made by the English Ships of their usual Clearances, and Bills of Lading. And it is upon that Point, that to this Instant turn the Complaints of the *British* Nation against the *Spanish* Guard-Ships.

SECTION XVII.

THESE Principles evidently demonstrate the Right of the *Prussian* Subjects, and carry the greater Force against the *English* Privateers, in that *England*, with regard to *Spain*, had its Hands tied up by several Treaties of Peace and Commerce with that Crown; whereas no such Treaty having existed between *Prussia* and *England*, the Affair cannot, nor ought not to be discussed, but according to the Laws of Nations.

SECTION XVIII.

ALL that could be granted to the *English* Nation would extend to no more than permitting its Privateers to inform themselves from the neutral Ships they should meet with at Sea, bound either to *Spain* or *France*, whether they had or not any Contraband on Board, &c. But there was no Sort of Necessity for searching such Ships, and yet less for carrying them forcibly into the Ports of *England*, and there detaining them whole Years. The Privateers then had no other Right beyond requiring the Exhibition of their usual Clearances, Bills of Lading, or Certificates, whereby to discover, whether they carried any Contraband Articles.

FOR the Support of which Practice, it is here relied on the very Principles which *Great-Britain* itself established in its Difference with *Spain*; and in Consequence of which, it maintained, that *Spain* ought to have contented itself with the Exhibition of the usual Clearances, and Certificates, to its Cruizers.

SECTION XIX.

AND as the Laws of Nations are chiefly established by the Examples, and by the Treaties of the Maritime Powers, it is here appealed to the most celebrated Treaties concluded between the said Powers, and in which it is agreed on all Sides to act in this Manner. Thus it is provided in the Treaties between *England* and *Holland* in the Years 1667 and 1668, Art. 20.

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AND the Treaty of the Year 1674, in the fifth Article, stands expressed as follows,

WHEN a Dutch Ship bound for an Enemy's Port, shall, on the High Sea, meet with English Ships, it shall bring to at a certain Distance, and the English Ship shall send its Boat, out of which two or three Men shall go on Board, and make the Captain or Master produce his usual Clearances and Certificate, to satisfy whether there is any Contraband on Board.

SECTION XX.

SOUND Reason dictates sufficiently, that without this Precaution, and if it was allowable for Privateers to attack a neutral Ship with open Force, to break open and stave Trunks and Chests, to drag them violently away into the Ports of *England*, notwithstanding the Proof by their Certificates of having no Contraband on Board, there is no such Thing as forming to one's self the Idea of a free Trade. And indeed what neutral Nation would run the Risk of trading, if it was to foresee that, after having recovered the Release of its Ships, there was no Reparation to be expected for the Damages, Charges, or Insolences they should have undergone, and should moreover see those neutral Ships condemned to pay to the Privateers the Costs of their Capture, &c. Can a Commerce thus liable be called a free one? If the *Prussian* Merchants were to have been obliged to carry on their Trade upon such a Footing, the Loss in all certainty would have out-balanced the Profit; and if the Wars had lasted longer, they

they must have renounced Common-Sense, had they continued so ruinous a Commerce.

SECTION XXI.

THE *Ministry* has expressly declared, that the Freedom of Trade with regard to neutral Ships should subsist *upon the same footing as in Time of Peace*, excepting only Warlike Stores. In Time of Peace Ships are not stopped in their Course, much less forced into the Ports of *England*.

SECTION XXII.

THE Consequences naturally deducible from the above, are that the Subjects of *Prussia* have by no means been suffered to carry on a free Trade *as in Time of Peace*, notwithstanding the Laws of Nature and Nations, and the positive Assurances given by the *English* Ministry: But that, on the contrary, the Trade of the said Subjects has been ruined; and that, consequently, the *English* Privateers are accountable for the Reparation of the Damages which they have caused to the Subjects of the King.

SECTION XXIII.

England cannot object to this Consequence, since, as above remarked, itself has treated, as a Violation of the Laws of Nations, the Procedure of the *Spaniards*, when these, not contented with the Exhibition of the usual Clearances and Certificates, have stretched their Office to the Search of the Ships themselves.

See § xvi.

QUESTION II.

WHETHER the said *English* Privateers were warranted to stop, on the high Seas, the *Prussian* Vessels, under a Pretext, that there was Merchandize on board them, that belonged to the Enemies of the *British* Nation? And whether they

Exposition of the Motives, &c.

had a Right to carry them into their Ports, and thereby retard the Course of their Navigation.

SECTION XXIV.

ONE of the most crying Grievances of the *Prussian* Subjects consists, in that their Ships loaded in *France*, were, on their Return Home, stopped on the High Seas, and carried by the *English* Privateers into the Ports of *England*: That, after being detained there a certain Time, they were, it is true, released; but that the *French* Merchandize found on Board was confiscated; or, at least, it was exacted from the Crew, that it should make Proof of the said Merchandize being the Property of the *Prussian* Subjects; that it was not given them in Commission by *French* Merchants, and that these had not charged themselves with the Risk, &c.

SECTION XXV.

THIS Conduct is not only contrary to the Laws of Nations, but also to all the Treaties that were ever concluded between Maritime Powers.

FIRST, Because, if as without Doubt it is free for the Subjects of *Prussia*, not only according to the Laws of Nations, but according to the formal Acknowledgement of the *English* Ministry, to trade with *Spain* and *France*, it necessarily follows from thence, that the said Traffic must be general, and might be carried on, either by Purchase, by Exchange, by taking *French* Goods upon Commission; &c.

SECONDLY, By a Commerce then of this Nature, no Prejudice could be done to the *English* Nation, since with Regard to Ships upon their Return, and bound for neutral Ports, reasonably speaking, all Contraband Trade must be out of the Question; which is the only Exception that could here take Place, either agreeable to the Law of Nations, or to the Declaration of the *English* Ministry.

THIRD-

THIRDLY, It is incontestable that Enemies, according to Reason, and even to the Law of Nations, are in Safety one from the other, when they meet in a neutral Place, and that consequently one Enemy cannot attack another Enemy in such a Place, nor seize any of his Effects. Now the *Prussian* Ships, had they been freighted with Effects belonging to the Enemies of *England*, are a neutral Place: Thence it follows, that it is all one, to carry off such Effects, from such neutral Ships, as to carry them off from a neutral Territory. This Point of the Law of Nations sees itself confirmed by this remarkable Maxim, expressly established in the Treaties between *England* and *Holland*, and between *England* and *France*; that *Free Ships render the Merchandize on Board free*.

FOURTHLY, It is proper to add here, that, conformably to the Declaration of Lord *Carteret*, the Trade of the *Prussian* Subjects was to continue as free as in time of Peace: Now, nobody can make Doubt, but that in Time of Peace it is allowed to every one to deal by Exchange, by Commission, &c.

FIFTHLY, All the Treaties concluded between the Maritime Powers are, in this Point, perfectly agreeable to the Laws of Nations. The same will be found clearly stipulated in the 8th Article of the Treaty of 1667, between *England* and *Sweden*.

Du Mont Corps Diplom. Vol. VII. Page 37.

AND in the 8th Article of the Treaty 1674, above-cited, it is there expressly decided,

THAT the Effects of an Enemy, on Board of a neutral Ship, should not be confiscated.

The same Clause stands Word for Word repeated in the Treaty of Commerce of 1713, between *England* and *Holland*, and between *Holland* and *France*.

Du Mont. Vol. VIII. p. 345. § 17. & P. 377. § 17.

AND the Reason given for it, is, that already above-recited, to wit,

That

That Free Ships render the Merchandize on Board free. A Reason drawn from the Law of Nations.

SECTION XXVI.

THE King then sees himself perfectly well grounded in his Exaction of a suitable Reparation of the Damages caused to his Subjects, by the unjust Procedure against, and Detainment of their Ships, without its concerning him to enquire whether the Goods had been given upon Commission to neutral Places by *French* Merchants, or whether or no these had taken upon themselves to run the Risks.

QUESTION III.

WHETHER the said Privateers had a Right to stop, on the High Seas, other Neutral Ships, such as those of Sweden, Holland, Denmark, Hamburgh, &c. N.B. freighted, in the Whole, or in Part, by Prussian Subjects, to carry them into England, to detain them whole Years, and disturb in this Manner the Trade of the Prussian Subjects?

SECTION XXVII.

B. THE appendix'd Piece, mark'd Letter B, shews, that on the High Seas there were stopped 33 NEUTRAL SHIPS, in which the Subjects of *Prussia* had an Interest; and that the *English* Privateers, instead of contenting themselves with the Exhibition of their usual Clearances and Bills of Lading, made by the Captains, in Proof of their having no Contraband on Board, carried them into the Ports of *England*, there detained, at least many of them, whole Years; and though they were at length released, they were nevertheless condemned in Costs of Capture to the Privateers.

THIS Procedure, which has disturbed the Trade of the *Prussian* Subjects, is not only in Contradiction to the Laws of Nations, but diametrically opposite to the Tenor of the Declaration of the *English* Ministry.

It is here presupposed, that all Neutral Ships had the same Right as the *Prussian* ones; whence it follows, that it must be perfectly indifferent whether the *Prussians* loaded their Goods on *Prussian* Bottoms, or on Neutral ones.

SECTION XXVIII.

THE *English* Ministry caused a general Assurance to be given to the Court of *Berlin*, that the Liberty of Trade should subsist (*N. B.*) with regard to the Neutral Powers, on the same Footing as in *Time of Peace*, (excepting Warlike Stores.)

As therefore in *Time of Peace* the Subjects of *Prussia* used to load their Goods upon other Neutral Bottoms, without any Apprehension, unless they carried Contraband Articles, of their being to be carried into the Ports of *England*; they continued, *bonâ fide*, their Commerce upon the same Footing, in full Reliance on the Declaration of *England*, of which the King had caused them to be informed.

SECTION XXIX.

THE said Subjects of *Prussia* would never have loaded their Goods upon those Ships, could they have foreseen that, against the Laws of Nations, against the Principles acknowledged by *England* itself, and against the express Declaration of its Ministry, these would have stopped all neutral Ships, whether they had Contraband Articles on Board, or not; that they would detain them whole Years in their Sea-ports, and release them at length without any Indemnification, and with even condemning them in the Costs of the Capture.

SECTION XXX.

CERTAIN it is that the *English* Nation could not have devised a surer Expedient for giving the finishing Stroke to the Commerce of the *Prussian* Subjects, than to proceed against them in the Manner it has done; whence it follows, that these are well warranted to claim a Satisfaction proportionable to the
Damages

Damages and Costs that have been caused to them by their unjust Detainments.

QUESTION IV.

WHETHER the Sorts of Merchandize, loaden upon Prussian Bottoms, or on Neutral ones, by the Subjects of Prussia, and which were confiscated from them, in Virtue of the unjust Decrees given against them by the English Tribunals, were really Contraband?

SECTION XXXI.

THE *English* Privateers having confiscated upon three Ships, *Prussian* or Neuter, the *Rye* and *Wood* wherewith they were loaded (*See forward*, § 38.) makes naturally Room for the two following Questions :

Were the said Goods Contraband or not?

And,

What is reputed Contraband according to the Law of Nations?

IT is an Axiom of the Law of Nations, that a War between two Powers cannot interrupt or hinder the Commerce of Neutral Powers with either the one or the other of those Powers at War; neither can either of these prohibit to the Power remaining neuter, the Use of a free Trade, to which it stands entitled by the Law of Nations; and that, consequently, the Commerce of all Sorts of Merchandize is regularly and implicitly held allowable.

SECTION XXXII.

THERE is in this Case one only Exception, and that is, when neutral Powers should assume to carry, to one of the Parties at War, Stores of War, which might be of Prejudice to the other; and this is what they call Contraband.

S E C.

SECTION XXXIII.

THE celebrated *Grotius*, in his *Treaty upon the Laws of War and Peace*, in his Examination of this Question, L. iii. C. i. §. 4. N. 2. distinguishing between those Sorts of Merchandize, that serve solely in War, and those that serve both in War, and out of War ;

HE ranks the *first Sort* of Merchandize amongst the Contraband ; but as to the *last*, he construes it such in no other Case but when conveyed to Places under an actual Siege or Blockade.

SECTION XXXIV.

GREAT-BRITAIN has in all Times treated this Matter in this very Light, when asked by neutral Powers to explain itself thereon.

WHEN the War was kindled between *Spain* and Queen *Elizabeth*, the Town of *Lubec*, desiring to know what Security it might have for its Trade, and what Sorts of Merchandize it might be allowed to send to *Spain*? This Queen answered :

THAT whilst they abstained from sending Arms, and other Implements of War, they were at Liberty to traffic thither in all other Sorts of Merchandize.

Seld. Mar. Claus. L. 2. Cap. 30. p. 433.

THE *Sieur Bonel*, *Swedish* Commissary, received, in 1653, a like Answer to a like Question, when the Parliament of *England* gave him to understand,

THAT in Warlike Stores excepted, they had no Objection to the *Swedes* trading wherever they thought proper.

Puff. Rer. Suec. L. 25. § 46.

SECTION XXXV.

THE *English* Ministry, in its Declaration to the Minister of *Prussia*, made use of the proper Terms of *Grotius*; and at the first Instance, declared, that *Warlike Stores alone* should be reputed Contraband.

See § 2.

A DECLARATION which was afterwards more particularly repeated, and in the following Terms :

THAT there was not the least Intention towards opposing any Obstacles to the Commerce of the *Prussian* Subjects, provided they abstained from conveying to the Enemies of the *British* Nation Warlike Stores (of which the specific Articles are particularized in, *N.B.* all the Treaties of Commerce between the Maritime Powers) and Victualling Stores, to Places besieged, or blockaded, &c. and that, for the rest, the Liberty of Commerce was to subsist, with respect to the Neutral Powers, upon the same Footing as in Time of Peace.

See § 3.

THE *English* Ministry did not confine itself to this, but specified, in Detail, all the Articles that were not Contraband, as *Grain, Wood, and all other Materials employed in the building of Ships, Cordage, Sails, Flax, Hemp-seed, Linnens, &c.*

SECTION XXXVI.

ALL the Treaties of Navigation are explicit in fixing the Definition of Contraband on the same Footing. Reference is here had to what has been said upon this Subject in the fifth Section above, and to the Treaty of Commerce of 1674, concluded between *England* and *Holland*, there cited, and in which may be found, exactly particularized, what is Contraband, and what free Merchandize.

BOTH

BOTH these Sorts of Merchandize are also pointed out in the same Terms Section 19 and 20, of the Treaty of Commerce concluded between *England* and *Holland* in 1715.

Du Mont. Vol. VIII. p. 348.

SECTION XXXVII.

THERE are to be found Treaties anterior to these two just cited, in which may be seen particularized upon the same Footing, what it is that does not come within the Description of Contraband.

THUS it is that in the third Section of the Treaty of Commerce between *Sweden* and *Holland*, nothing bears the Appellation of Contraband but *Warlike Stores alone*; and that in the fourth Section, Money, all Sorts of Grain, Salt, Wine, Oil, Sails, Cloths, *Hemp*, all Sorts of Timber, and every Thing serviceable towards the building of Ships, Anchors, &c. are ranked amongst the Sorts of free Merchandize.

Du Mont, Corps Diplom. Vol. VII. Part I. p. 67.

SECTION XXXVIII.

IT is enough to cast one's Eyes over the Sorts of Merchandize that were confiscated in *England* from the *Prussian* Subjects, to convince one's self, that there is not any of them, which, according to the Laws of Nations, according to all Treaties of Commerce, and, *N.B. N.B.* according to the Declaration of the *English* Ministry, could pass for Contraband.

FOR out of a *Prussian* Ship, called the *Twins*, they confiscated a Cargo of Wood; out of a *Dutch* Ship, the *Three Sisters*, another Cargo of Wood; and out of a *Prussian* Ship, the *Golden Sun*, a Cargo of Rye; all Articles of Merchandize expressly excepted out of the Contraband by the Declaration of the *English* Ministry.

SECTION XXXIX.

IF the *English* Ministry had, from the Beginning, declared, that it considered these Kinds of Merchandize as Contraband, the King would not have failed of warning his Subjects not to risk the sending them, till the Matter had been settled with the Court of *England*; but the *English* Ministry having positively declared, that it looked upon the said Sorts of Merchandize as free ones; and the King having communicated this Declaration to his Subjects, the said Ministry can in no wise justify the Procedure of their Privateers.

SECTION XL.

VAINLY does the present *English* Ministry seek to justify the Procedure of their Privateers, by a Reason, which equally shocks common Sense, and the Practice received amongst all well-ordered Nations.

IT is said, that the preceding Ministry had not Authority, of its own Head, to make such Declarations, and to determine, contrary to the Disposition of the Laws of the Country, what was Contraband, or what was not so.

SECTION XLI.

IT is appealed to the whole Universe, whether it is allowable, between Power and Power, to make Use of such Subterfuges?

FIRST, It is well known, that, as the Custom is, Princes never treat with the foreign Envoys, but through Means of their Ministers. There is then a Necessity of giving Credit to whatever these declare, in the Name of their Masters, to the Envoys who treat with them. But there is yet a greater Necessity for it, when those Ministers refuse, as upon this Occasion, to explain themselves in Writing.

SECOND-

SECONDLY, Moreover, the abovesaid Declaration was not made by one Minister only, but by two successive ones, at different Times, and at both the Times, in the Name of his *Britannic* Majesty. Can it then be presum'd, that two Ministers, whose Integrity and Patriot Zeal are so universally acknowledged, could forget themselves to such a Point, as to declare, in the Name of their Master, a Thing upon which he had not given them his Orders,—to deceive, in so unworthy a Manner, a foreign Allied Power, and to lay such dangerous Snares for the Subjects of that Power?

THIRDLY, Besides, it has been shewn, that the said Ministers granted nothing, but what, according to the Laws of Nations, and to all the Treaties between the Maritime Powers, is ever ranked amongst the Articles of free Merchandize.

SECTION XLII.

TRUE it is, that it has been observed, from certain Decrees which have been issued from the *English* Tribunals, that they had confiscated the Cargoes of some neutral Ships, upon which *Prussian* Goods had been laden; and it should seem at the first Glance, that, in such a Case, the Subjects of *Prussia* had no Right to exact Reparation of Damages from any but the Masters or Owners of the Ship.

THIS is not denied; and it is even agreed to, that if the neutral Ships had carried on any Contraband Trade, the Subjects of *Prussia* could not, with Justice, have sought elsewhere for their Indemnification. But as they solemnly deny, as do likewise the Masters of the said Ships, that there was any Contraband in the Case, and that by the Decrees themselves of the *English* Tribunals, it clearly appears, that the Goods confiscated were in no wise Contraband, this Pretext can be of no Service to the Privateers, nor exempt them from repairing the Damages they have caused.

SECTION XLIII.

IT stands then demonstrated, that the Law of Nations has been manifestly violated, in direct Contravention too to the Assurances given by the *English* Ministry, when those Neutral Ships were stopt, which carried no Contraband Articles, and whereby a very considerable Damage has been occasioned to the *Prussian* Subjects.

QUESTION V.

WHETHER the English Ministry had a Right to refer to the Tribunal of Marine, established in England, the Decision of Differences of the Nature of those examined in the preceding Questions, when those Differences are in Agitation between two free Powers, and to want to oblige the aggrieved Power, who demands Satisfaction, to abide by the Decisions of such a Tribunal?

SECTION XLIV.

THE *English* Ministry, in almost all the Cases in which the Ministers of *Prussia* made Representations to them upon the Depredations and Insolences committed upon the High Seas against the Subjects of *Prussia*, has declared to them,

THAT the King of *England* had established in his Dominions Courts of Judicature, expressly to examine and decide, according to the Laws of *England*, all the Prizes upon which there was any Contest, and to administer Justice to every one; which Courts would not fail of rendering Justice to the Subjects of *Prussia*, if their Complaints were found well-grounded: That, moreover, neither the King of *Great-Britain*, nor his Ministry, could alter or depart from the Practice or Constitution of Government established in that Country.

SECTION XLV.

UPON which on this Occasion one cannot avoid asking the Question, By what Right is it that the *English* Ministry arrogates to itself that of taking any Cognizance at all of such Causes, and of exercising a Kind of Jurisdiction over a neutral Sovereign, over his Subjects, and his Ships, stopt in a Place which does not belong to the Dominion of *England*, and in which the *Prussian* Ships have as much Right as the *English* ones?

SECTION XLVI.

WITH what an Eye would *England* have beheld the King (of *Prussia*) in the last War of the North, seize indifferently all the *English* Ships trading to the North, stop them on the High Seas, search, and carry them into his Ports, afterwards refer to the Decision of his College of Admiralty, whether they were good Prizes or not; release them, without any Amends, after a Process of two or three Years standing, and condemn them besides to the Payment of from 2, 3, to 4000 Crowns, for Charges of Capture, and Costs of Suit?

SECTION XLVII.

WHEN two Powers have any Difference between them, neither of them can, on either Side, appeal to the Laws of the Country, because one of the two Parties does not acknowledge them. The Affair then must be treated in the Way of Negotiation from Court to Court, and the Difference can only be decided with the Consent of both Parties, according to the Laws of Nations, or by the Means founded thereon.

SECTION XLVIII.

IT would however have been extremely indifferent to the King, which of the two it had been, the *English* Ministry, or the Tribunals of that Nation, that should have rendered Justice to his Subjects: But as those Tribunals, contrary to the Laws of Nature and Nations, have not procured to the said *Prussian* Subjects any Reparation, it is to be believed, that the *English* Ministry is too reasonable, not to judge from itself, that the
King

Exposition of the Motives, &c.

King is, on his Part, well-grounded in his Refusal to acknowledge the Jurisdiction of the said Tribunals to be a competent one, much less to submit himself to their unjust Decisions.

SECTION XLIX.

AND as the *English* Ministers have, as often as Representations have been made to them in the Name of the King, always obstinately stuck to their Reference of these Sort of Affairs to the Decision of their Tribunals, and of their Laws; his *Prussian* Majesty, enjoying, as he does, the same Rights and Prerogatives as his *Britannic* Majesty, has seen himself thereby constrained to commit, in his own Dominions, the Examination of the Grievances of his Subjects to his proper Tribunals. To this End the King has established a Commission, composed of Counsellors versed in the Affairs of Justice, as well as in those of Commerce, with Charge, under the Direction of four of his Ministers, to examine the Grievances of his Subjects, according to the universally-received Rights and Laws of Nations; and to state in Conscience, and according to their Duty, the exact nett Sum to which the Damages of his Subjects may amount.

SECTION L.

THIS is then what the said Commission has effectually executed. The Commissioners have exacted legal Proofs of the Liquidation of every Claim of Costs: They have moderated, in an equitable Manner, those Articles which appeared to be overcharged: They have rejected the Pretensions of those who could not verify them in Form, and consequently they have acted in every Thing, and rendered Justice, without the least Respect to Persons, and with the greatest Impartiality.

QUESTION VI.

WHETHER, in fine, on the one Hand, the King is not fully justifiable, in his giving Way to the Attachment which his Subjects have requested him to lay on the English Capital Funds, stipulated by the Peace-Treaties of Breslau and Dresden, and which are in his Hands, so as he may procure

procure to his Subjects their Indemnity, and a suitable Reparation for the Violences exercised against them by the English Privateers, in Despite of the Law of Nations, and notwithstanding the formal Declarations repeated by the English Ministry: And whether the King has not a Right to indemnify his Subjects out of those Capitals, seeing that Justice has been so long denied them, which they were so well grounded to demand?

SECTION LI.

IT has been proved in the Premises, that the Subjects of the King had legal Pretensions to form against the *English* Privateers. It has been shewn too, that since the Year 1745, to this Instant, it has not been possible to obtain thereon any Satisfaction from the *English* Ministry; and it has been just now observed, that the King had ordered a Commission, established in his Dominions, to liquidate the exact Amount of the said Pretension, which, *N.B.* is found to be 194,725 Crowns, 14 Gr. and 5 Deniers, inclusive of the Interest until the 10th of July, 1752. There remains no more then, than to examine the Means by which may be procured to the *Prussian* Subjects the Satisfaction for, and Indemnity of their Losses.

SECTION LII.

IT is a Rule founded both upon Reason, and upon the Law of Nations, that when a Sovereign denies to the Subjects of another Sovereign that Justice which this last has required, and solicited of him to render to them; or when he does not do them due Justice, as well that Sovereign as his Subjects are answerable for it, in their own special and personal Name.

Grot. De Jure Belli & Pacis, L. iii. C. 2. § 2. “ It has
“ been established by the Law of Nations, that all the
“ Properties of the Subjects of a State shall be like as
“ mortgaged for what the State, or the Head of the State,
“ may owe directly, and upon their own Account, or for
“ so much as, for want of rendering due Justice, they may
“ have made themselves liable for the Debt of others.”

Grot. De Jur. Bell. & Pac. L. iii. C. 13. § 2. N. 2. "Not
 " only the Estate of the Debtor is, as it were, mortgaged
 " to the Creditor, but also what belongs to his Subjects,
 " who are implicitly answerable for the Debt."

Gro. L. iii. C. 2. § 5 and 7. " In such case one may seize
 " on the Persons, or the personal Effects of, the Subjects
 " of that Sovereign who refuses to render Justice. It is
 " true this is not authorized by the Law of Nature, but
 " Custom has almost every where established the Practice
 " of it."

HERE he alledges sundry Examples from Antiquity.

SECTION LIII.

THIS Principle of the Law of Nations is founded upon Natural Reason, because the Subject is implicitly held to approve the Acts of their Sovereign, and to subscribe to his Judgment; whence it naturally follows, that they are answerable for it, and that, when all other Means are wanting, it is to their personal Property that Recourse must be had.

SECTION LIV.

Now, since the King happens to have in his Hands certain Capital-funds belonging to *English* Subjects, and of which Payment is due to them, in Discharge of *Silesia*, no one can disapprove, that, in Pursuance of the Law of Nations, and upon the Instances made by his Subjects, his Majesty should attack those Funds, and employ them in their Indemnification.

SECTION LV.

THE *English* Ministry has so much the less Room to exclaim upon so moderate a Measure being preferably taken, since themselves, in a similar Case, and before having declared War against *Spain*, pursued it for several Years together.

S E C-

SECTION LVI.

WITH Regret it is, that the King sees himself under a Necessity to come to this Extremity, of which the Consequences fall upon innocent Members of a Nation, for which he has ever had all imaginable Regard: An Extremity to which he would never have had recourse, if he had had other Means of procuring Satisfaction to his Subjects.

SECTION LVII.

THE King, in acting thus, purely follows the Rules dictated by the most correct Justice. He cannot, without being wanting to his Duties of a Sovereign, and to his Honour, refuse to protect effectually his Subjects, who had not traded on the Footing they have done, but for their confiding in the Declaration, which had for its Foundation the Word passed by the *English* Ministers.

SECTION LVIII.

THE *English* Subjects (who are the most interested in this Affair) will perhaps find means, by Help of the Parliament, to inspire the *English* Ministry with more equitable Sentiments, or to compel the Privateers to the real Payment of the Sums liquidated; for which they are accountable to the *Prussian* Subjects; to which Effect those Subjects, from this Instant, make over to the Stock-holders in the *Silesia*-loan all the Demands they have on the said Privateers.

SECTION LIX.

How the *English* Ministry understands it is past all Comprehension, whilst they pretend that *England* would find itself disengaged from the Guaranty of *Silesia* from that Moment; that the Payment of those Funds (guaranteed to the *English* Subjects by the Treaties of Peace of *Breslau* and *Dresden*, and in regard to which only that Guarantee of *Silesia* had been granted) should be interrupted. It seems, that in the Case as it now stands, the

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English Ministry has afresh lost Sight of the Law of Nations; for neither the preceding Peace, nor the Motive upon which that Peace was concluded, are at all here concerned; but the Matter in Question is a *new* Offence, committed after the Conclusion of the Peace, by *English* Subjects, against those of the King; and it is this *new* Injury that engages the King to make use of Reprisals, towards obtaining Satisfaction for it.

SECTION LX.

IT is clearly Matter of Fact, that it was not till after the Peace of *Breslau*, of 1742, and that of *Dresden* 1745, confirmative of the precedent one, (by which Treaties the King engaged to pay off to *English* Subjects more than one Million of Mortgage upon *Silesia*; and on the other Part, the King of *Great Britain*, as being comprehended in the said Peace, took upon himself to be a Guarantee of the said Treaty) It was only, I say, since that Peace, that the *English* Privateers began, notwithstanding the Laws of Nations, and the positive Assurances of the Ministry of that Nation, to insult as well the *Prussian* Ships, as the neutral ones upon which the *Prussians* had laden permissible Merchandize, when they pillaged some, and forcibly dragged others into the Ports of *England*; whence, after having detained them whole Years, they released them at length, without making them any Satisfaction for the Damages and Expences their Detainment had caused them, and with condemning them even in the Costs of Capture.

SECTION LXI.

THE Point then in Question here is a *new* Offence, and which does not draw its Origin from the preceding War, nor has any Connection with it, but which purely of itself alone requires a *new* Reparation.

SECTION LXII.

THE King, towards obtaining Reparation for this new Offence, is authorized by the Law of Nations, to have recourse to the Funds

Funds of the *English* Subjects, which he happens to have in his Hands, so long as his Subjects shall not be indemnified.

See above, §. 52, 53.

SECTION LXIII.

THE preceding Peace does not receive any Attaint thereby, since, according to the Laws of Nations, the Reparation of a new Offence may be prosecuted (*salva pace*) without Interruption of a Peace.

SECTION LXIV.

THE illustrious *Grotius* clearly decides this Question, by a Principle founded upon Natural Reason.

“ IT is a Question (says he) that occurs every Day, and is often debated, when it is that a Peace may be looked upon as broken; for it is one Thing, *NB.* to furnish a new Subject for War by a new Offence, and another Thing to break a Peace.”

HE there brings in an Example parallel to the Case here examined.

“ IF it happens that, after a Peace concluded, one of the contracting Parties commits Violence upon the Subjects of the other, and consequently *offends that other afresh*, the Peace does not for all that cease to subsist, but the Party offended can, *NB. NB. salva pace*, without violating that Peace, recommence War upon this new Motive.”

Grot. De Jure Bell. & Pac. L. iii. c. 20. § 28 & 32. And c. 20. § 32. and § 33, n. 3.

SECTION LXV.

IF then a Peace, concluded between two Parties at War, subsists even after that one of the contracting Parties has suffered new Acts of Hostility on the Part of the other, with how much more cogent a Reason is not one to look upon that Peace as subsisting,

subsisting, when it is only the Mediator and Guarantee of that Peace, who, by a new Injury, gives Room to one of the contracting Parties, to lay an Attachment upon certain Things stipulated in that Peace, until he shall have obtained Satisfaction for this new Injury.

SECTION LXVI.

BUT, should any take it into their Heads to maintain, against all Reason, that at least such an Attachment was to annul the Guarantee promised in the Treaties of *Breslau* and *Dresden*, nevertheless that, which is stipulated in the 22d Article of the Peace of *Aix-la-Chapelle*, of the 18th of *October*, 1748, would subsist always in its full Force. In all Events, the King would find himself equally disengaged on his Side from the Guarantee given by him, with regard to the Succession of the reigning Family in *England*, and of that of the Electoral States of *Hanover*.

SECTION LXVII.

It is then clear, from all the foregoing, that, notwithstanding the Attachment laid upon the *English* Funds in the Mortgage of *Silesia*; the Peace of *Breslau*, and, consequently, the Guarantee of the King of *Great-Britain*, and that of *England*, which is comprehended in it, subsist entire: A Guarantee, which the King, if Occasion should offer, will very well know how to assert effectually in its proper Season.

Letter

Letter A.

S P E C I F I C A T I O N

OF THE

P R U S S I A N S H I P S,

T A K E N O N T H E H I G H S E A S,

Against the Rules established by the Law of Nations, unjustly detained, and afterwards released by the *English* Marine, during the last War: And the Captures and Detainments whereof have caused Losses and Damages to the Subjects of His *Prussian* Majesty, either for the Ships themselves, or for the Effects and Merchandize laden upon them.

Number of Ships	Names of the Ships and Captains.	Names of the English Privateers who took them.	Voyages in which the Capture was made	Date of the Capture, and Time of Detainment.	Names of the Prussian Subjects who have suffered Damage thereby	Upon what Account, and of what Sorts of Merchandize
1.	The Frederick Friendship, Capt. Sprenger	The Postilion of Topsham, C. John Morgan	From Bourdeaux to Stetin	Taken April 16, 1748, till May 1, 1748	Tornicke and Pingel of Stetin	Account of Detainment of the Ship
2.	The Twins, Capt. Kruth	The Prince Frederick, Capt. Norris	From Stetin to Port L' Orient or Brest	Taken August 12, 1747, detained 10 Months	Vanselow of Stetin	Account of Detainment of the Ship
3.	The Anne Elizabeth, Capt. Daniel Shultz	1. The Salamander, Capt. Henry Staffield 2. The Dolphin, Capt. Henry Pierce	From France to Stetin	Taken Jan. 7, 1748, detained 6 Months	1. Shultz of Stetin 2. The Widow Schroeder	1. For a Cargo of Wine and Chestnuts 2. Account of the Ship itself
4.	The Catherine Christina, Capt. Frederick Berend	The Prosperous, Capt. Solomon Courier	From Bourdeaux to Stetin	Taken April 5, 1748, detained 4 Days	Barthold of Stetin	Account of Detainment of the Ship

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472 *Specification of the Prussian Ships taken on the High Seas, &c.*

<i>Number of Ships</i>	<i>Names of the Ships and Captains</i>	<i>Names of the English Privateers who took them</i>	<i>Voyages in which the Capture was made</i>	<i>Date of the Capture and Time of Detainment</i>	<i>Names of the Prussian Subjects who suffered Damage thereby</i>	<i>Upon what Account, and of what Sorts of Merchandize</i>
5.	The Dame Juliana, Capt. Martin Preft	The Prince of Orange, Capt. John Stevenson	From Leghorn to Amsterdam	Taken Jan. 20, 1748, detained 5 Months	Barthold of Stetin	Account of Detainment of the Ship
6.	Frederick II. K. of Prussia, Capt. Christian Shultze	The Endeavour, Capt. Robert Crowsewall	From Bourdeaux to Konigsberg	Taken April 4, 1748, detained 4 Months	1. Saturgus of Kon. 2. Bischoff and Maas of Konigsberg 3. Sherres of Kon.	1. Acc. Wines and Brandy lad. thereon 2. Acc. Det. of Ship 3. Account of Wine
7.	The Ship Good-Wind, Capt. Michael Jurianzen	Capt. Abraham Broxell	From Morlaix to Rotterdam	Taken April 5, 1748, detained 3 Months	Dickman and Son of Konigsberg	Account of Detainment of the Ship
8.	The Golden Sun, Capt. Jacob Rider	The Sackville, Capt. Peter Wood	From Konigsberg to Bourdeaux	Taken Dec. 29, 1747, detained 5 Months	The Widow of Shurt Liewes of Konigsberg	Account of Detainment of the Ship
9.	The De Daageroud, Capt. Martin Sperwien	The Endeavour, Capt. Robert Crousewall	From Rotterdam to Bayonne.	Taken March 26, 1748, detained 8 Months	The Widow of Shurt Liewes of Konigsberg	Account of Detainment of the said Ship
10.	The Frederick II. King of Prussia, Capt. Christian Shultz	The Eagle, Capt. John Baseley	From Konigsberg to Bourdeaux	Taken Nov. 16, 1746, detained till July 17, 1747	Bischoff and Maas of Konigsberg	Account of the Ship itself
11.	The Golden Eagle, Capt. Onne Arends	The Prince of Orange, Capt. John Stevenson	From Dunkirk	Taken July 24, 1747, detained 4 1/2 Months	Onne Arends of East Friezeland	Account of Detainment of the said Ship
12.	The Two Brothers, Capt. Jon. Hallen	The York, Capt. Gravenner The Saltash, Capt. John Knight	From Rotterdam to Roan	Taken April 16, 1748, detained 4 Months	The Widow of John Hallen of East Friezeland	Account of Detainment of the said Ship
13.	The Young Andrew, Capt. Henry Barkhorn	The Mary Galley, Capt. Peter Oliver	From Dublin to France	Taken Sept. 9, 1747, detained 8 1/2 Months	Espanhiac and Cabrit of Konigsberg	Account of the Ship and a Lading of Turf

Specification of the Prussian Ships taken on the High Seas, &c. 473

<i>Number of Ships</i>	<i>Names of the Ships and Captains</i>	<i>Names of the English Privateers who took them</i>	<i>Voyages in which the Capture was made</i>	<i>Date of the Capture, and Time of Detainment</i>	<i>Names of the Prussian Subjects who have suffered Damage thereby</i>	<i>Upon what Account, and of what Sorts of Merchandize.</i>
14.	The Dorothy Sophia, Capt. Peter Kettelhut	1. The Eagle, Capt. Bartzely 2. The York, Capt. Gravenner	From Bourdeaux to Rotterdam	Taken Dec. 10, 1745, detained till August 12, 1746	Löper, Privy Counsellor, and Sherenberg, Counsellor of Commerce at Stetin	Account of Detainment of the Ship
15.	The Two Brothers, Capt. Augustine Augustinus	The Kingfisher, Capt. William Salter Willet	From Rotterdam to Ostend	Taken July 26, 1747, detained till Jan. 27, 1748	Augustin Augustinus of East Frizeland	Account of Detainment of the Ship
16.	The St. John, Capt. John Grose	1. The Prince of Orange 2. The King of Sardinia, Capt. Torman	1. From Leghorn to Rotterdam 2. From Bayonne to Rotterdam	1. Taken Dec. 11, 1747, till Dec. 20, 1747 2. Taken April 30, 1748, till May 29, 1748	Jon Frederick Peters of Stetin	Account of Detainment of the Ship
17.	The Young Tobias, Capt. Paul Otto	The Corriual, Capt. John Milton	From Bourdeaux to Dantzick	Taken May 15, 1748, detained 7 Days	Sherenberg, Counsellor of Commerce Kretchmar, Merchant, Paul Otto, Captain of the Ship, and Gohr of Stetin	Account of Detainment of the Ship
18.	The Little David, Capt. Michael Bughdall	The Hawk, Capt. Bulkeley The Warren Galley, Capt. Ryan Brown	From Bourdeaux to Dunkirk	Taken May 17, 1748, detained till Sept. 27, 1748	Splitzgerber and Daun of Berlin	Account of Detainment of the Ship, and of its Lading of Wine and Brandy

Letter B.

S P E C I F I C A T I O N OF THE N E U T R A L S H I P S,

Taken, and unjustly detained, against all the Laws of Nations, by the *English* Marine, and afterwards released, during the last War.

And of which the Capture and Detainments have occasioned Losses and Damages to the Subjects of His Majesty the King of *Prussia*, for the Merchandize with which they were laden, and which were detained in *England*, although at length released.

Number of Ships	Names of the Ships and Captains	Names of the English Privateers who took them	Voyages in which the Capture was made	Date of the Capture, and Time of Detainment	Names of the Prussian Subjects who suffered Damage thereby	Upon what Account, and of what Sorts of Merchandize
1.	A Dane, the Cecilia, Capt. Bois Swensen	The Chesterfield, Capt. Samuel Gilbeck	From Ceüta to Altena	Taken April 22, 1748, detained till June 11, 1748	Palmir and Le Cocq of Berlin	For a Cargo of Wine
2.	A Swede, the Nahring, Capt. Christian Tiedeman	The Cumberland, Capt. Henry Cooper	From Rochelle to Bourdeaux	Taken Oct. 13, 1747, detained 6 $\frac{1}{2}$ Months	1. Le Cocq of Berlin 2. The Schwartz Brothers of Magdeburgh 3. Sandrat and Hammel of Magdeturgh 4. Meurn of Berlin	1. For 3 Barrels of Indigo 2. For 2 Barrels of Indigo 3. For Indigo, Sugar, and Orlean 4. For Indigo

Specification of the Neutral Ships, &c.

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<i>Num- ber of Ships.</i>	<i>Names of the Ships and Captains</i>	<i>Names of the English Pri- vateers who took them</i>	<i>Voyages in which the Capture was made</i>	<i>Date of the Cap- ture, and Time of Detainment</i>	<i>Names of the Prussian Subjects who suffered Da- mage thereby</i>	<i>Upon what Account, and of what Sorts of Merchandize</i>
3.	The Lady Jane, Capt. Joachim Peyn	The Fortune, Capt. Gilbert Chain	From Ham- borough to Cadiz	Taken March 17, 1747, detained 6 Months	1. Mentzel of Hirschberg 2. The Widow of John Martin Gottfrid, and her Son-in-law, of Hirschberg 3. The Widow of Buchs and Son, of Hirschberg 4. Splittgerber and Daun of Berlin	1. For 3 Bales of Linnens 2. For Linnens 3. For ditto 4. For ditto
4.	A Swede, the Carlsghaven Werft, or Carlsghaven Dock, Capt John Holm	The Lilly, Capt. Thomas Knowles	From Ham- borough to Cadiz	Taken Dec. 24, 1747, detained 1 Year	1. Mentzel of Hirschberg 2. The Widow of John Martin Gottfried, and Son-in-law, of Hirschberg 3. The Widow and Son of God- frey Glatfey of Hirschberg 4. Hartman of Hirschberg 5. Schober of Hirschberg 6. Buttner of Schmiedeberg 7. Splittgerber and Daun of Berlin	1. For 7 Chests of Linnens 2. For Linnens 3. For ditto 4. For ditto 5. For ditto 6. For ditto 7. For Flax and Tin
5.	A Ham- burgher, the Anne Eliza- beth, Capt. Christian Mau	The Carlisle, Capt. William Owen	From Ham- borough to Cadiz	Taken Sept. 10, 1746, detained 6 1/2 Months	1. The Widow of John Martin Gottfried, and Son-in-law, of Hirschberg 2. The Widow and Son of God- frey Glatfey of Hirschberg 3. John Hartmann of Hirschberg 4. Splittgerber and Daun	1. For Linnens 2. For ditto 3. For ditto 4. For ditto

Num-

Specification of the Neutral Ships, &c.

<i>Number of Ships</i>	<i>Names of the Ships and Captains</i>	<i>Names of the English Privateers who took them</i>	<i>Voyages in which the Capture was made</i>	<i>Date of the Capture and Time of Detainment</i>	<i>Names of the Prussian Subjects who suffered Damage thereby</i>	<i>Upon what Account, and of what Sorts of Merchandize</i>
6.	A Swede, Gustavus the Prince Royal, Capt. Barthold Muhl	The Anson, Capt. Benjamin Goodwin	From Ham- borough to Cadiz.	Taken October 27, 1747, de- tained 15 Months	1. The Widow of John Martin Got- fried, and Son-in- law, of Hirsch- berg 2. The Widow and Son of God- frey Glatfey of Hirschberg 3. Hartmann of Hirschberg 4. Tietze of Hirschberg 5. Cuenz of Hirschberg 6. Carpzow of Hirschberg 7. Splitberger and Daun of Berlin	1. For Linnens 2. For ditto 3. For ditto 4. For ditto 5. For ditto 6. For ditto 7. For Flax
7.	A Dane, the Young Benja- min, Capt. Henry Neu- schilling	The Prospe- rous, Capt. Solomon Courier	From Hambo- rough to Cadiz	Taken June 2, 1747, detained 6 Months	1. The Widow and Son of God- frey Glatfey of Hirschberg 2. Christop. Cuentz of Hirschberg	1. For Linnen 2. For ditto
8.	The Prince Frederick, Capt. John Hartmann		From Hambo- rough to Bil- boa and Bayonne	Taken May 28, 1748, detained 1 1/2 Month	The Widow and Son of Godfrey Glatfey of Hirschberg	For Linnens
9.	A Hollander, the Mary Jo- seph, Capt. Jeurier Rouge	The Anson, Capt. Benja- min Goodwin	From Hambo- rough to Cadiz	Taken Sept. 21, 1747, detained 10 Months	John Godfrey Bultner of Schmiedeberg	For Linnens
10.	A Hamburger, the Union, Capt. John Struckmann	The Culloden, Capt. Abra- ham Boxel	From Bour- deaux to Hamborough	Taken August 9, 1747, detained 3 Months	1. The Schwartz Brothers of Mag- deburgh 2. Sandrat and Hummel of Magdeburgh	1. For Coffee 2. For Sugar and Coffee

Specification of the Neutral Ships, &c.

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<i>Number of Ships</i>	<i>Names of the Ships and Captains</i>	<i>Names of the English Privateers who took them.</i>	<i>Voyages in which the Capture was made</i>	<i>Date of the Capture and Time of Detainment</i>	<i>Names of the Prussian Subjects who suffered Damage thereby</i>	<i>Upon what Account, and what Sorts of Merchandize</i>
11.	A Hamburger, the Neptune Capt. Sander Heeren	The Hardwick, Capt. James Samian	From Nantz to Hamborough	Taken August 10, 1747, detained 5 Months	1. The Schwartz Brothers of Magdeburgh 2. Sandrat and Hummel of Magdeburgh	1. For Coffee 2. For Coffee, Sugar and Pernambuco.
12.	A Flemburgher, the St. Paul, Capt. Jent Hinrichsen	The Chefferfield, Capt. Samuel Gilbeck	From Nantz to Hamborough	Taken April 5 1748, detained 1 1/2 Month	The Schwartz Brothers of Magdeburgh	For Coffee
13.	The Crown, Capt. Peter Claßen	The Prince of Orange, Capt. John Topmann	From Nantz to Hamborough	Taken Oct. 25, 1747, detained till Jan. 2, 1748	1. Eberspach of Berlin 2. The Sons of Feyerisen, and Siebert of Glogaw	1. For Indigo 2. For ditto
14.	The Lady Catherine, Capt. Wilke de Vries	The Tartar, Capt. Thomas Spicer	From Rochelle to Altena	Taken April 5, 1748, detained 7 Months	1. Spatzier and Engelhart of Berlin 2. The Widow Reyne of Berlin 3. Matthis of Berlin	1. For Brandy 2. For ditto 3. For ditto
15.	The Concord, Capt. Claes Eichels	The George, Capt. William Freebairne	From Rochelle to Hamborough	Taken Nov. 21, 1747, detained 6 Months	1. Gillet of Berlin 2. Grand of Berlin 3. Schneiderhins of Berlin.	1. For Syrup and Brandy 2. For Syrup and Brandy 3. For Syrup
16.	The Jane, Capt. Gerard Royer Altag	The Culloden Capt. Abraham Boxel	From Charente to Hamborough	Taken August 7, 1747, detained 1 Year	1. The Widow Reyne of Berlin 2. Schuler and Reyne of Berlin	1. For Brandy For ditto
17.	A Hamburger, the Friendship, Capt. John Quimann	The George, Capt. William Freebairn	From Rochelle to Hamborough	Taken August 10, 1747, detained 3 Months	Sandrat and Hummel of Magdeburgh	For Indigo

Specification of the Neutral Ships, &c.

Number of Ships	Names of the Ships and Captains	Names of the English Privateers who took them	Voyages in which the Capture was made	Date of the Capture, and Time of Detainment	Names of the Prussian Subjects who have suffered Damages thereby	Upon what Account, and of what Sort, of Merchandise
18.	A Dane, the Young Prince Christian, Capt. John Cornelius Leuwen	The Endeavour, Capt. Robert Crousewall	From Marseilles to Hamborough	Taken Sept. 12, 1747, detained till Jan. 2, 1748	1. Sandrat and Hummel of Magdeburgh 2. Matthis of Berlin	1. For Coffee, Saffron, and Verdigrease 2. For Almonds
19.	The Lady Margaret, Capt. Henry Bielenberg	The Culloden, Capt. Abr. Boxel	From Bourdeaux to Hamborough	Taken August 29, 1747, detained 3 1/2 Months	1. Beker of Colberg 2. Schneiderhantz of Berlin 3. Weisbach of Potsdam	1. For Indigo 2. For Wine, Vinegar, and Brandy 3. For Coffee
20.	A Hamburger, the Rose-bush, Capt. Peter Classen	The Endeavour, Capt. Robert Crousewall	From Bourdeaux to Hamborough	Taken April 6, 1748, detained 3 Months	1. Beker of Colberg 2. Weisbach of Potsdam	1. For Indigo 2. For Syrup
21.	A Sonderburgher, the Mary-Sophia, Capt. Christ. Giegerfen	The Carlisle, Capt. William Owens	From Rochelle to Hamborough	Taken March 20, 1747, detained 5 Months	Meurer of Berlin	For Indigo
22.	The Anna-Sophia, Capt. Henry Horn de Wolgast	Capt. Jellers	From Bourdeaux to Konigsberg	Taken March 21, 1747, detained 2 Days	Saturgus of Konigsberg	For Wine and Bayonne Hams
23.	A Dantzicker, the Hop, of Dantzick, Capt. Conrad Harlach	The Chesterfield, Capt. Gilbeck	From Bourdeaux to Dantzick	Taken Aug. 17, 1747, detained 7 Months	1. Dickmann and Son of Konigsberg 2. Korn of Konigsberg 3. Albrecht of Konigsberg	1. For Prunes 2. For Wines 3. For Indigo
24.	The Young John, of Petersburg, Capt. Thomas Siefers	The D. Wm. Capt. Richard Gravenor The Dolphin, Capt. Thomas Pierce	From Bourdeaux to Hamborough	Taken May 12, 1748, detained 3 Months.	1. The Widow of Bucks, and Son of Hirschberg 2. Weisbach of Potsdam	1. For Indigo 2. For Verdigrease

Specification of the Neutral Ships, &c.

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<i>Number of Ships</i>	<i>Names of the Ships and Captains</i>	<i>Names of the English Privateers who took them</i>	<i>Voyages in which the Capture was made</i>	<i>Date of the Capture, and Time Detainment</i>	<i>Names of the Prussian Subjects who have suffered Damages thereby</i>	<i>Upon what Account, and of what Sorts of Merchandize</i>
25.	The Gregory, of Bremen, Capt. Jacob Muller	The St Michael, Capt. George Clarmingham	From Bourdeaux to Hamborough	Taken March 19, 1748, detained 2 Months	Maquet and Son of Magdeburgh	For Brandies, Wines, Oils, Olives, Capers, Almonds
26.	The Young Catherine, commanded by Capt. Kupper, afterwards by Capt. Elkes	The Culloden, Capt. Abraham Boxel	From Bourdeaux to Hamborough	Taken in May, 1747, detained 6 Months	Schniderhintz of Berlin	For Syrup
27.	The Six Sisters, of Lubec	The Culloden, Capt. Abraham Boxel	From Bourdeaux to Lubec	Taken Oct. 21, 1747, detained 5 Months	Kritting of Koenigsberg	For Indigo
28.	The St. Anne of Hamborough, Capt. Abr. Peterfon	The George, Capt. William Freebairn	From Bourdeaux to Hamborough	Taken Aug. 11, 1747, detained 3 $\frac{1}{2}$ Months	Wisbach of Potsdam	For Brandy
29.	The Young Eldert, of Hamborough, C. J. Stuvén	An English Privateer	From Roan to Hamborough	Taken May 4, 1748, detained 5 Months	The Widow Schroder of Stetin	For Wine
30.	The Just Henry, of Hamborough, Capt. Henry Elkes	The Culloden, Capt. Abraham Boxel	From Bourdeaux to Hamborough	Taken in July 1747, detained 6 Months	Pompera of Berlin	For Wines and Brandy
31.	A Dane, the Elizabeth, Capt. Soren Peterfon	The Culloden, Capt. Abraham Boxel	From Hamborough to Roan	Taken Sept. 17, 1747, detained 8 Months	Splittgerber and Daun of Berlin	For Copper
32.	The Lady Clara, Capt. Hermann Classen Driest	The King George, Capt. John Harding	From Hamborough to Roan	Taken June 22, 1747, detained 5 $\frac{1}{2}$ Months	Splittgerber and Daun	For Wax
33.	Adolphus Frederick, Capt. Jonas de Haspin	1. Capt. Peter Wood 2. Capt. Rich. Gravener	From Marfeilles to Hamborough	Taken April 10, 1748, detained 3 Months	The Jew Hertz of Potsdam	For Goats Hair and Anchovies

THE

THE

Duke of NEWCASTLE'S LETTER,

By His MAJESTY'S ORDER,

To Monsieur *MICHELL*, the King of *Prussia*'s
Secretary of the Embassy, in Answer to the Memorial,
and other Papers, delivered, by Monsieur *MICHELL*, to the
Duke of *NEWCASTLE*, on the 23d of *November*, and 13th
of *December*, 1752.

Whitehall, Feb. 8, 1753.

S I R,

I LOST no Time in laying before the King, the Memorial,
which you delivered to me on the 23d of *November* last,
with the Papers, that accompanied it.

His Majesty found the Contents of it so extraordinary, that
he would not return an Answer to it, or take any Resolution
upon it, till he had caused both the Memorial, and the *Expo-
sition des Motifs*, &c. which you put into my Hands soon
after, by way of Justification of what had passed at *Berlin*, to be
maturely considered; and till His Majesty should thereby be en-
abled to set the Proceedings of the Courts of Admiralty here, in
their true Light; to the end, that his *Prussian* Majesty, and the
whole World, might be rightly informed of the Regularity of
their Conduct; in which they appear, to have followed the
only Method, which has ever been practised by Nations, where

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Disputes

The Duke of Newcastle's Letter

Disputes of this Nature could happen; and strictly to have conformed themselves to the Law of Nations, universally allowed to be the only Rule, in such Cases, when there is nothing stipulated to the contrary, by particular Treaties between the Parties concerned.

This Examination, and the full Knowledge of the Facts resulting from it, will shew, so clearly, the Irregularity of the Proceedings of those Persons, to whom this Affair was referred at *Berlin*; that it is not doubted, from his *Prussian* Majesty's Justice and Discernment, but that he will be convinced thereof, and will revoke the Detention of the Sums assigned upon *Silesia*; the Payment of which, his *Prussian* Majesty engaged to the Empress Queen to take upon himself, and of which the Reimbursement was an express Article in the Treaties, by which the Cession of that *Dutchy* was made.

I, therefore, have the King's Orders to send you the Report, made to his Majesty, upon the Papers abovementioned, by Sir *George Lee*, Judge of the Prerogative Court; Doctor *Paul*, His Majesty's Advocate General in the Courts of Civil Law; Sir *Dudley Ryder*, and Mr. *Murray*, his Majesty's Attorney, and Solicitor General. This Report is founded on the Principles of the Law of Nations, received and acknowledged by Authorities, of the greatest Weight, in all Countries; so that His Majesty does not doubt, but that it will have the Effect desired.

The Points, upon which this whole Affair turns, and which are decisive, are,

First, That Affairs of this Kind are, and can be, cognizable, only in the Courts belonging to that Power, where the Seizure is made; and, consequently, that the Erecting foreign Courts, or Jurisdictions elsewhere, to take Cognizance thereof, is contrary to the known Practice of all Nations, in the like Cases; and, therefore, a Proceeding which none can admit.

Secondly, That those Courts, which are generally styled Courts of Admiralty, and which include both the inferiour Courts, and the Courts of Appeal, always decide according to the universal Law

Law of Nations only ; except in those Cases, where there are particular Treaties between the Powers concerned, which have altered the Dispositions of the Law of Nations, or deviate from them.

Thirdly, That the Decisions, in the Cases complained of, appear by the inclosed Report, to have been made singly, upon the Rule prescribed by the Law of Nations ; which Rule is clearly established, by the constant Practice of other Nations, and by the Authority of the greatest Men.

Fourthly, That, in the Case in Question, there cannot even be pretended to be any Treaty, that has altered this Rule, or by Virtue of which, the Parties could claim any Privileges, which the Law of Nations does not allow them.

Fifthly, That as, in the present Case, no just Grievance can be alledged, nor the least Reason given, for saying, That Justice has been denied, when regularly demanded ; and as, in most of the Cases complained of, it was the Complainants themselves, who neglected the only proper Means of procuring it ; there cannot, consequently, be any just Cause, or Foundation, for Reprisals.

Sixthly, That, even though Reprisals might be justified by the known and general Rules of the Law of Nations, it appears, by the Report, and indeed from Considerations, which must occur to every body, that Sums, due to the King's Subjects by the Empress Queen, and assigned by her upon *Silesia* ; of which Sums his *Prussian* Majesty took upon himself the Payment, both by the Treaty of *Breslau*, and by that of *Dresden*, in Consideration of the Cession of that Country, and which, by Virtue of that very Cession, ought to have been fully, and absolutely discharged in the Year 1745, that is to say, one Year before any of the Facts complained of did happen ; could not, either in Justice or Reason, or according to what is the constant Practice between all the most respectable Powers, be seized, or stopt, by way of Reprisals.

The Duke of Newcastle's Letter

The several Facts, which are particularly mentioned above, are so clearly stated, and proved, in the inclosed Report; that I shall not repeat the particular Reasons and Authorities alledged in Support of them, and in Justification of the Conduct and Proceedings in Question. The King is persuaded, that these Reasons will be sufficient also to determine the Judgment of all impartial People, in the present Case.

It is material to observe, upon this Subject, that this Debt on *Silesia* was contracted by the late Emperor *Charles* the Sixth; who engaged, not only to fulfil the Conditions expressed in the Contract, but even to give the Creditors such further Security, as they might afterwards reasonably ask. This Condition had been very ill performed by a Transfer of the Debt, which had put it in the Power of a Third Person to seize, and confiscate it.

You will not be surprized, Sir, that, in an Affair, which has so greatly alarmed the whole Nation, who are entitled to that Protection, which His Majesty cannot dispense with himself from granting; the King has taken Time, to have Things examined to the Bottom; and that his Majesty finds himself obliged, by the Facts, to adhere to the Justice, and Legality, of what has been done in his Courts, and not to admit the Irregular Proceedings, which have been carried on elsewhere.

The late War furnished many Instances, which ought to have convinced all *Europe*, how scrupulously the Courts here do Justice, upon such Occasions. They did not even avail themselves of an open War, to seize, or detain, the Effects of the Enemy, when it appeared that those Effects were taken wrongfully before the War. This Circumstance must do Honour to their Proceedings; and will, at the same Time, shew, that it was as little necessary, as proper, to have Recourse elsewhere to Proceedings, entirely new, and unusual.

The King is fully persuaded, that what has passed at *Berlin*, has been occasioned, singly, by the ill-grounded Informations, which

to Monsieur Michell.

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which his *Prussian* Majesty has received, of these Affairs: And does not at all doubt, but that, when his *Prussian* Majesty shall see them in their true Light, his natural Disposition to Justice and Equity will induce him, immediately to rectify the Steps, which have been occasioned by those Informations; and to complete the Payment of the Debt charged on the Dutchy of *Silesia*, according to his Engagements for that Purpose.

I am, with much Consideration,

S I R,

Your most Obedient,

Humble Servant,

Holles Newcastle.

To

To the KING's most Excellent
M A J E S T Y.

May it please Your Majesty,

IN Obedience to your Majesty's Commands, signified to us by his Grace the Duke of *Newcastle*, we have taken the Memorial, Sentence of the *Prussian* Commissioners, and Lifts marked A and B, which were delivered to his Grace by Monf. *Michell*, the *Prussian* Secretary here, on the 23d of *November* last; and also the printed *Exposition des Motifs*, &c. which was delivered to his Grace the 13th of *December* last, into our serious Consideration. And we have directed the proper Officer to search the Registers of the Court of Admiralty, and inform us how the Matter appeared from the Proceedings there, in Relation to the Cases mentioned in the said Lifts A and B; which he has accordingly done.

And your Majesty having commanded us to report our Opinion, concerning the Nature and Regularity of the Proceedings under the *Prussian* Commission, mentioned in the said Memorial; and of the Claim or Demand pretended to be founded thereupon; and how far the same are consistent with, or contrary to, the Law of Nations, and any Treaties subsisting between your Majesty and the King of *Prussia*, the established Rules of Admiralty Jurisdiction, and the Laws of this Kingdom:

For the greater Perspicuity, we beg leave to submit our Thoughts upon the whole Matter in the following Method.

1st, To state the clear Established Principles of Law.

2^{dly}, To state the Fact.

3^{dly}, To apply the Law to the Fact.

4^{thly},

ably, To observe upon the Questions, Rules, and Reasonings alledged in the said Memorial, Sentence of the *Prussian* Commissioners, and *Exposition des Motifs*, &c. which carry the Appearance of Objections to what we shall advance upon the former Heads.

First, *As to the L A W.*

When two Powers are at War, they have a Right to make Prizes of the Ships, Goods, and Effects, of each other, upon the High Seas. Whatever is the Property of the Enemy may be acquired by Capture at Sea; but the Property of a Friend cannot be taken, provided he observes his Neutrality.

Hence the Law of Nations has established,

That the Goods of an Enemy, on Board the Ship of a Friend, may be taken.

That the lawful Goods of a Friend, on Board the Ship of an Enemy, ought to be restored.

That Contraband Goods, going to the Enemy, tho' the Property of a Friend, may be taken as Prize; because supplying the Enemy with what enables him better to carry on the War, is a Departure from Neutrality.

By the Maritime Law of Nations, universally and immemorially received, there is an established Method of Determination, whether the Capture be, or be not, lawful Prize.

Before the Ship, or Goods, can be disposed of by the Captor, there must be a regular judicial Proceeding, wherein both Parties may be heard, and Condemnation thereupon as Prize, in a Court of Admiralty, judging by the Law of Nations and Treaties.

The proper and regular Court for these Condemnations, is the Court of that State, to whom the Captor belongs.

The

The Duke of Newcastle's Letter

The Evidence to acquit or condemn, with, or without, Costs or Damages, must, in the first Instance, come merely from the Ship taken, *viz.* the Papers on Board, and the Examination on Oath of the Master and other Principal Officers; for which Purpose, there are Officers of Admiralty in all the considerable Sea Ports of every Maritime Power at War, to examine the Captains, and other Principal Officers of every Ship, brought in as Prize, upon General and Impartial Interrogatories: If there don't appear from thence Ground to condemn, as Enemy's Property, or Contraband Goods going to the Enemy, there must be an Acquittal, unless from the aforesaid Evidence the Property shall appear so doubtful, that it is reasonable to go into further Proof thereof.

A Claim of Ship, or Goods, must be supported by the Oath of some body, at least as to Belief.

The Law of Nations requires good Faith: Therefore every Ship must be provided with complete and genuine Papers; and the Master at least should be privy to the Truth of the Transaction.

To enforce these Rules, if there be false or colourable Papers; if any Papers be thrown over-board; if the Master and Officers examined *in Præparatorio* grossly prevaricate; if proper Ship's Papers are not on Board; or if the Master and Crew can't say, whether the Ship or Cargo be the Property of a Friend or Enemy, the Law of Nations allows, according to the different Degrees of Misbehaviour, or Suspicion, arising from the Fault of the Ship taken, and other Circumstances of the Case, Costs to be paid, or not to be received, by the Claimant, in Case of Acquittal and Restitution. On the other Hand, if a Seizure is made, without probable Cause, the Captor is adjudged to pay Costs and Damages: for which Purpose, all Privateers are obliged to give Security for their good Behaviour: And this is referred to, and expressly stipulated by many Treaties*.

Though

* Treaty between *England* and *Holland*, 17 Feb. 1668, Art. 13. Treaty 1 Dec. 1674. Art. 10. Treaty between *England* and *France* at *St. Germain's*, 24 Feb.

Though from the Ship Papers, and the preparatory Examinations, the Property don't sufficiently appear to be Neutral, the Claimant is often indulged with Time, to send over Affidavits to supply that Defect: If he will not shew the Property, by sufficient Affidavits, to be Neutral, it is presumed to belong to the Enemy. Where the Property appears from Evidence not on Board the Ship, the Captor is justified in bringing her in, and excused paying Costs, because he is not in Fault; or, according to the Circumstances of the Case, may be justly entitled to receive his Costs.

If the Sentence of the Court of Admiralty is thought to be erroneous, there is in every Maritime Country a superior Court of Review, consisting of the most considerable Persons; to which the Parties, who think themselves aggrieved, may appeal: and this superior Court judges by the same Rule which governs the Court of Admiralty, *viz.* The Law of Nations, and the Treaties subsisting with that neutral Power, whose Subject is a Party before them.

If no Appeal is offered, it is an Acknowledgement of the Justice of the Sentence by the Parties themselves, and conclusive.

This Manner of Tryal and Adjudication is supported, alluded to, and inforced, by many Treaties*.

In

24 Feb. 1677. Article 10. Treaty of Commerce at *Ryswick*, Sept. 20. 1697. between *France* and *Holland*, Art. 30. Treaty of Commerce at *Utrecht*, 31 March, 1713. between *Great-Britain* and *France*, Art. 29.

* As appears, with respect to Courts of Admiralty adjudging the Prizes taken by those of their own Nation, and with respect to the Witnesses to be examined in those Cases, from the following Treaties.---Treaty between *England* and *Holland*, 17 Feb. 1668. Art. 9. and 14. Treaty 1 Dec. 1674. Art. 11. Treaty 29th of April 1689. Art. 12, 13. Treaty between *England* and *Spain*, 23 May, 1667. Art. 23. Treaty of Commerce at *Ryswick*, 20 Sept. 1697. between *France* and *Holland*, Art. 26 and 31. Treaty between *England* and *France*, 3 Nov. 1655. Art. 17 and 18. Treaty of Commerce between *England* and *France* at *St. Germain's*, 29 March, 1632. Art. 5 and 6. Treaty at *St. Germain's*, 24 Feb. 1677. Art. 7. Treaty of Commerce between *Great-Britain* and *France*, at *Utrecht*, 31 March, 1713. Art. 26 and 30. Treaty between *England* and *Denmark*, 29 Nov. 1669. Art. 23 and 34. *Heineccius*,

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who

In this Method, all Capture at Sea were try'd during the last War, by *Great-Britain, France and Spain*, and submitted to by the neutral Powers. In this Method, by Courts of Admiralty acting according to the Law of Nations, and particular Treaties, all Captures at Sea have immemorially been judged of, in every Country of *Europe*. Any other Method of Tryal would be manifestly unjust, absurd, and impracticable.

Tho' the Law of Nations be the general Rule; yet it may, by mutual Agreement between two Powers, be varied or departed from; and where there is an Alteration, or Exception, introduced by particular Treaties, that is the Law between the Parties to the Treaty: and the Law of Nations only governs so far as it is not derogated from by the Treaty.

Thus by the Law of Nations, where two Powers are at War, all Ships are liable to be stopped, and examined to whom they belong, and whether they are carrying Contraband to the Enemy: But particular Treaties have enjoined a less Degree of Search on the Faith of producing solemn Passports, and formal Evidences of Property, duly attested.

Particular Treaties too have inverted the Rule of the Law of Nations, and, by Agreement, declared the Goods of a Friend on board the Ship of an Enemy to be Prize; and the Goods of an Enemy, on Board the Ship of a Friend, to be free; as appears from the Treaties already mentioned, and many others*.

who was Privy-Counsellor to the King of *Prussia*, and held in the greatest Esteem, in his Treatise *De Navibus ob vecturam vitellarum mercium commissis*, Cap. 2. Sect. 17 and 18, speaks of this Method of Trial.

With respect to Appeals or Reviews:---From Treaty between *England and Holland*, 1 Dec. 1674. Art. 12, as it is explained by Art. 2, of the Treaty at *Westminster*, 6 Feb. 1715-16. Treaty between *England and France* at *St. Germain*, 24 Feb. 1677, Art. 12. Treaty of Commerce at *Ryswick*, 20 Sept. 1697, between *France and Holland*, Art. 33. Treaty of Commerce at *Utrecht*, 31 March, 1713, between *Great-Britain and France*, Art. 31 and 32. and other Treaties.

* Particularly by the aforesaid Treaty between *England and Holland*, 1 Dec. 1674. and the Treaty of *Utrecht*, between *Great-Britain and France*.

So

So likewise, by particular Treaties, some Goods reputed Contraband by the Law of Nations are declared to be free.

If a Subject of the King of Prussia is injured by, or has a Demand upon, any Person here, he ought to apply to your Majesty's Courts of Justice, which are equally open and indifferent to Foreigner or Native: So, *vice versa*, if a Subject here is wronged by a Person living in the Dominions of his Prussian Majesty, he ought to apply for Redress in the King of Prussia's Courts of Justice.

If the Matter of Complaint be a Capture at Sea during War, and the Question relative to Prize, he ought to apply to the Judicatures established to try these Questions.

The Law of Nations, founded upon Justice, Equity, Convenience, and the Reason of the Thing, and confirmed by long Usage, don't allow of Reprizals, except in Case of violent Injuries, directed or supported by the State, and Justice absolutely denied in *re minime dubia*, by all the Tribunals, and afterwards by the Prince*.

Where the Judges are left free, and give Sentence according to their Conscience, though it should be erroneous, that would be no Ground for Reprizals. Upon doubtful Questions, different Men think and judge differently; and all a Friend can desire, is, that Justice should be as impartially administered to him, as it is to the Subjects of that Prince, in whose Courts the Matter is try'd.

* *Grotius de Jure Belli ac Pacis*, Lib. 3. Cap. 2. Sect. 4, 5.

Treaty between England and Holland, 31 July, 1667. Art. 31. " Reprizals shall not be granted, till Justice has been demanded according to the ordinary Course of Law."

Treaty of Commerce at Ryswick, 20 Sept. 1697. between France and Holland, Art. 4. " Reprizals shall not be granted, but on manifest Denial of Justice."

Secondly, *As to the F A C T.*

We have subjoined hereto two Lifts, tallying with those marked A. and B. which were delivered to His Grace the Duke of Newcastle, by Monf. *Michell*, with the said Memorial, the 23d of November last; and are also printed at the End of the said *Exposition des Motifs*, &c. From whence it will appear, that as to the Lift A. which contains eighteen Ships and their Cargoes,

4 If ever taken, were restored by the Captors themselves, to the Satisfaction of the *Prussians*, who never have complained in any Court of Justice here.

1 Was restored by Sentence, with full Costs and Damages, which were liquidated at 2801 *l.* 12 *s.* 1 *d.* Sterling.

3 Ships were restored by Sentence, with Freight for such of the Goods as manifestly belonged to the Enemy, and were condemned.

4 Ships were restored by Sentence; but the Cargoes, or Part of them, condemned as Prize, or Contraband, and are not now alledged, in the Lift A. or B. to have been *Prussian* Property.

5 Ships and Cargoes were restored by Sentence, but the Claimant subjected to pay Costs, because, from the Ship-Papers, and Preparatory Examinations, there was Ground to have condemned; and the Restitution was decreed merely on the Faith of Affidavits afterwards allowed.

1 Ship and Cargo was restored by Sentence upon an Appeal, but, from the Circumstances of the Capture,
18 without Costs on either Side.

There need no Observations upon this Lift. As to the eight Cases first above mentioned, there cannot be the Colour of Complaint.

As

As to the four next, the Goods must be admitted to have been rightly condemned, either as Enemy's Property, or Contraband, for they are not now mentioned in the Lifts A. or B.

If Contraband, the Ship could have neither Freight nor Costs; and the Sentences were favourable, in restoring the Ships, upon Presumption, that the Owners of the Ships were not acquainted with the Nature of the Cargo, or Owners thereof. If Enemy's Property, the Ships could not be entitled to Freight, because the Bills of Lading were false, and purported the Property to belong to *Prussians*.

The Ships could not be entitled to Costs, because the Cargoes, or Part of them, being lawful Prize, the Ships were rightly brought in.

As the six remaining Ships and Cargoes were restored, the only Question must be, upon the Paying or not Receiving Costs, which depends upon the Circumstances of the Capture, the Fairness of the Ship's Documents, and Conduct of her Crew; and neither the *Prussian* Commissioners, the said Memorial, or said *Exposition des Motifs*, &c. alledge a single Reason, why, upon the particular Circumstances of these Cases, the Sentences were wrong.

As to the Lift B.

Every Ship, on Board which the Subjects of *Prussia* claim to have had Property, was bound to, or from, a Port of the Enemy; and many of them appeared clearly to be, in Part, laden with the Goods of the Enemy, either under their own, or fictitious Names.

In every Instance, where it is suggested that any Part of the Cargo belong'd to a *Prussian* Subject, though his Property did not appear from the Ship's Papers, or Preparatory Examinations, which it ought to have done, sufficient Time was indulged to that *Prussian* Subject, to make an Affidavit, that the Property was *bona fide* in him: And the Affidavit of the Party himself
has

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has been received as Proof of the Property of the *Prussian*, so as to intitle him to Restitution.

Where the Party wo'nt swear at all, or swears evasively, it is plain he only lends his Name, to cover the Enemy's Property, as often came out to be the Case beyond the Possibility of Doubt.

It appears by a Letter ^{29 May}_{9 June} 1747, from Mons. *Andrié* to his *Prussian* Majesty, exhibited in a Cause, and certified to be a true Extract by Mons. *Micbell* under his Hand, that this colourable Manner of screening the Goods of the Enemy was stated in the following Words.

" Your Majesty's Subjects ought not to load on board Neutral
" Ships any Goods really belonging to the Enemies of *England*,
" but to load them for their own Account, whereby they may
" safely send them to any Country they shall think proper, with-
" out running any Risk: Then, if Privateers commit any Da-
" mage to the Ships belonging to your Majesty's Subjects, you
" may depend on full Justice being done here, as in all the like
" Cases hath been done."

Lift B, contains Thirty-three Cases.

2 Two of them never came before a Court of Justice in *England*, but (if taken) were restored by the Captors themselves, to the entire Satisfaction of the Owners.

16 In sixteen of them, the Goods claimed by the *Prussian* Subjects appear to have been actually restored, by Sentence, to the Masters of the Ships in which they were laden; and, by the Customs of the Sea, the Master is in the Place of the Lader, and answerable to him.

14 In Fourteen of the Cases, the *Prussian* Property was not verified, by the Ship's Papers, or preparatory Examinations, or Claimant's own Affidavit, which he was allowed Time to make.

¹
33 And the other Cause, with respect to Part of the Goods, is still depending, neither Party having moved for Judgment

ment *. And so conscious were the Claimants, that the Court of Admiralty did Right, there is not an Appeal, in a single Instance, in List B, and but one, in List A.

Thirdly, *To apply the Law to the F A C T.*

The Sixth Question, in the said *Exposition des Motifs &c.* states the Right of Reprizals to be, *puisque'on leur a si longtems denié toute la Justice qu'ils étoient fondés de demander.*

The said Memorial founds the Justice, and Propriety of his *Prussian* Majesty's having recourse to Reprizals; because his Subjects *n'ont pu obtenir jusqu'à present aucune Justice des Tribunaux Anglois qu'ils ont réclamés, ou du Gouvernement auquel ils ont porté leurs Plaintes.* And in another Part of the Memorial it is put, *après avoir en vain demandé des Reparations de ceux qui seuls pouvoient les faire.*

The contrary of all which is manifest from the above State, and Lists hereto annexed.

In Six of the Cases specified, If such Captures ever were made, the *Prussian* Subjects were so well satisfied with the Restitution made by the Captors, that they never complained in any Court whatsoever in this Kingdom.

The rest were judged of, by a Court of Admiralty, the only proper Court to decide of Captures at Sea, both with respect to the Restitution, and the Damages and Costs; acting according to the Law of Nations, the only proper Rule to decide by: And Justice has been done by the Court of Admiralty so impartially, that all the Ships, alledged in List A, to have been *Prussian*, were restored; and all the Cargoes, mentioned in either List A or B, were restored, excepting Fifteen, one of which is still undetermined.

* The *Prussian* has since applied for Judgment, on the 29th of *January*, and obtained Restitution.

And

And, in all the Cases in both Lists, Justice was done, so entirely to the Conviction of the private Conscience of the *Prussian* Claimants, that they have acquiesced under the Sentences, without appealing; except in one single Instance, where the Part of the Sentence complained of was reversed.

Though the *Prussian* Claimants must know, that, by the Law of Nations, they ought not to complain to their own Sovereign, till Injustice *in re minime dubia* was finally done them, past Redress; and though they must know, that Rule of the Law of Nations held more strongly upon this Occasion, because the Property of the Prize was given to the Captors, and ought, therefore, to be litigated with them. The *Prussian*, who, by his own Acquiescence, submits to the Captors having the Prize, cannot afterwards with Justice make a Demand upon the State. If the Sentence was wrong, it is owing to the Fault of the *Prussian*, that it was not redressed. But, it is not attempted to be shewn, even now, that these Sentences were unjust in any Part of them, according to the Evidence and Circumstances appearing before the Court of Admiralty, and that is the Criterion.

For as to the *Prussian* Commission to examine these Cases, *ex parte*, upon new Suggestions; it never was attempted in any Country of the World before. Prize, or not Prize, must be determined by Courts of Admiralty, belonging to the Power whose Subjects make the Capture: Every Foreign Prince in Amity has a Right to demand that Justice shall be done his Subjects in those Courts, according to the Law of Nations, or particular Treaties, where any are subsisting. If *in re minime dubia* these Courts proceed upon Foundations directly opposite to the Law of Nations, or subsisting Treaties, the Neutral State has a Right to complain of such Determination.

But there never was, nor ever can be, any other Equitable Method of Tryal. All the Maritime Nations of *Europe* have, when at War, from the earliest Times, uniformly proceeded in this Way, with the Approbation of all the Powers at Peace. Nay, the Persons acting under this extraordinary and unheard-of Com-

Commission from his *Prussian* Majesty, don't pretend to say, that in the Four Cases of Goods condemned here, for which Satisfaction is demanded in List A, the Property really belonged to *Prussian* Subjects: But they profess to proceed upon this Principle, evidently *false*, that, tho' these Cargoes belonged to the Enemy, yet being on Board *any Neutral Ship*, they were not liable to Enquiry, Seizure, or Condemnation.

Fourthly, *From the Questions, Rules, Reasonings, and Matters, alledged in the said Memorial, Sentence of the Prussian Commissioners, and Exposition des Motifs, &c. the following Propositions may be drawn, as carrying the Appearance of Objections to what has been above laid down.*

First Proposition.

That by the Law of Nations, the Goods of an Enemy cannot be taken on Board the Ship of a Friend: and this the Prussian Commissioners lay down as the Basis of all they have pretended to do.

Answer. The Contrary is too clear to admit of being disputed. It may be proved, by the Authorities of every Writer upon the Law of Nations; some of different Countries are referred to*. It

* *Il Consolato del Mare*, cap. 273, expressly says, The Enemy's Goods, found on board a Friend's Ship, shall be confiscated. And this is a Book of great Authority.

Grotius de Jure Belli ac Pacis, Lib. iii. cap. 1, Section 5, numero 4, in the Notes, cites this Passage in the *Il Consolato*, and in his Notes, Lib. iii. cap. 6. Sect. 6.

Loccenius De Jure Maritimo, lib. ii. cap. 4, Sect. 12.

Voet De Jure Militari, cap. 5. n. 21.

Heineccius, the learned *Prussian* before quoted, *De Navibus ob Vecturam vitatarum Mercium commissis*, cap. ii. Sect. 9. is clear and explicit upon this Point.

Bynkershoek Quaestiones Juris Publici, lib. i. cap. 14, per totum.

Zouch (an *Englishman*) in his Book *De Judio inter Gentes*, pars 2, Sect. 8, numero 6.

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It may be proved by the constant Practice, antient and modern : but the General Rule cannot be more strongly proved, than by the Exception which particular Treaties have made to it †.

Second Proposition.

It is alledged that Lord Carteret, in 1744, by two Verbal Declarations, gave Assurances in your Majesty's Name, that nothing on Board a Prussian Ship should be seized, except Contraband ; consequently that all Effects, not contraband, belonging to the Enemy, should be free ; and that these Assurances were afterwards confirmed in Writing by Lord Chesterfield the 5th of January 1747.

Answer. The Fact makes this Question not very material, because there are but four Instances in Lifts A or B, where any Goods, on Board a *Prussian* Ship, have been condemned ; and no Satisfaction is pretended to be demanded for any of those Four Cargoes in Lifts A and B. However it may be proper to shew how groundless this Pretence is.

Taking the Words, alledged to have been said by Lord *Carteret*, as they are stated ; they don't warrant the Inferences endeavoured to be drawn from them. They import no New Stipulation, different from the Law of Nations ; but expressly profess to treat the *Prussians* upon the same Foot with the Subjects of other Neutral Powers under the like Circumstances ; *i. e.* with whom there was no particular Treaty. For the Reference to other Neutral Powers cannot be understood to communicate

Treaty between *Great-Britain* and *Sweden*, 23 Oct. 1661. Art. 12 and 13. Treaty between *Great-Britain* and *Denmark*, 29 Nov. 1669, Art. 2d.---And the Passport or Certificate, settled by that Treaty, are material as to this Point.

† Treaty between *France* and *England*, 24 Feb. 1677, Art. 8.

Treaty of *Utrecht* between *France* and *England*, 1713, Art. 17.

Treaty between *England* and *Holland*, 17 Feb. 1668, Art. 10.

Treaty between *England* and *Holland*, 1 Dec. 1674, Art. 8.

Treaty between *England* and *Portugal*, 10 July, 1654, Art. 23.

Treaty between *France* and the *States General* at *Utrecht*, 11 April, 1713, Art. 26.

the

the Terms of any particular Treaty. It is not so said. The Treaties with *Holland, Sweden, Russia, Portugal, Denmark, &c.* all differ. Who can say which was communicated? There would be no Reciprocity; the King of *Prussia* don't agree to be bound by the Clauses, to which other Powers have, by their respective Treaties, agreed. No *Prussian* Goods, on Board an Enemy's Ship, have ever been condemned here; and yet they ought, if the Treaties with *Holland* were to be the Rule between *Great Britain* and *Prussia*; nay, if these Treaties were to be the Rule, all now contended for, on the Part of *Prussia*, is clearly wrong; because, by Treaty, the *Dutch*, in the last Resort, are to apply to the Court of Appeal here.

Treaty of Alliance between Great-Britain and Holland at Westminster, the 6th of February 1715-17, Article II.

' Whereas some Disputes have happened, touching the Explanation of the 12th Article of the Treaty Marine in 1674. it is agreed and concluded, for deciding any Difficulty upon that Matter, to declare, by these Presents, that by the Provisions mentioned in the said Article, are meant those which are received by Custom in *Great Britain* and in the *United Provinces*, and always have been received, and which have been Granted, and always are Granted, in the like Case, to the Inhabitants of the said Countries, and to every Foreign Nation.'

Lord Carteret is said twice to have refused, in which Monsieur *Andrie* acquiesces, to give any Thing in Writing, as not usual in *England*.

Supposing the Conversations to mean no more, than a Declaration of course, that Justice should be done to the *Prussians*, in like Manner as to any other Neutral Power, with whom there was no Treaty; there was no Occasion for Instruments in Writing; because in *England* the Crown never interferes with the Course of Justice. No Order or Intimation is ever given to any Judge. Lord Carteret therefore knew that it was the Duty of

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the Court of Admiralty to do equal Justice, and that they would, of themselves, do what he said to Monsieur *Andrie*.

Had it been intended, by Agreement, to introduce, between *Prussia* and *England*, a Variation, in any Particular, from the Law of Nations; and consequently, a New Rule for the Court of Admiralty, to decide by; it could only be done by a Solemn Treaty, in Writing, properly authorized, and authenticated. The Memory of it could not otherwise be preserved; the Parties interested, and the Courts of Admiralty, could not, otherwise, take Notice of it.

But Lord *Chesterfield's* Confirmation, in a Letter of the 5th of *January* 1747, being relied upon, the Books of the Secretary's Office have been searched, and the Letter to *Monf. Mitchell* is found, which is *verbatim* as follows.

*Translation of the Earl of Chesterfield's Letter to
Monf. Michell.*

Whitehall, Jan. 5, 1747-8.

S I R,

HAVING had the Honour to receive the King's Orders upon the Subject of the Memorial, which you delivered to me on the 8th Instant, N. S. I would not delay informing you, that his Majesty, in order to omit nothing, whereby He may shew His Attention to the King your Master, makes no Difficulty in declaring, That His Majesty has never had, or will have, any Intention, to give any Interruption to the Navigation of the *Prussian* Subjects, as long as they shall take Care to carry on their Commerce in a lawful Manner, and conformable to the ancient Usage, as established and acknowledged amongst neutral Powers.

His *Prussian* Majesty cannot be ignorant, that there are Treaties of Commerce actually subsisting between *Great-Britain* and certain Neutral States, and that by Means of the Engagements formerly contracted on each Side by those Treaties, every Thing relating

relating to the Manner of reciprocally carrying on their Commerce, has been finally settled and regulated.

At the same Time, it does not appear that any such Treaty exists at present, or ever did exist, between his Majesty and the King of *Prussia*: Nevertheless, that has never hindred the *Prussian* Subjects being favoured by *England* with respect to their Navigation, as much as other Neutral Nations: And his Majesty does not suppose, that the King your Master means to require Distinctions from his Majesty, much less any Preferences, in Favour of His Subjects in this Point.

His *Prussian* Majesty is too well informed, not to know, that there are in this Government fix'd and establish'd Laws, which cannot be departed from; and that in case any *English* Ships of War should commit the least Injustice to the Trading Subjects of the King your Master, here is a Tribunal, *viz.* the High Court of Admiralty where they have a Right to apply and make their Complaints: and they may be previously assured, that, in such Case, impartial Justice will be administred to them; the Juridical Proceedings of the said Court being, and having ever been, unimpeach'd and irreproachable, as appears by numerous Examples of Neutral Vessels illegally taken, having been restored, with Costs and Damages, to the Proprietors.

This is the Answer the King has ordered me to give, upon the Contents of your said Memorial; and His Majesty cannot but flatter himself, that, in consequence hereof, the King your Master's Desire will be fully answered, with relation to the Point in Question; of which his Majesty is the more assured, as he is persuaded that the King of *Prussia* would not require any Thing, but what is Equitable.

I am, with much Consideration, Sir,

Your most obedient, and most humble Servant,

CHESTERFIELD.

There

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There need no Observations. It is Explicit, and in exprefs Terms puts *Prussia* upon the Foot of other Neutral Powers with whom there was no Treaty; and points out the proper Way of applying for Redrefs.

The verbal Declarations, made by Lord *Carteret* in 1744, which are said to have been confirmed by this Letter from Lord *Chesterfield*, cannot have meant more than the Letter expreffes.

And it is manifest, by the above Extract from Monsieur *Andrié's* Letter to his *Prussian* Majesty, that in *May* 1747, Monsieur *Andrié* himself understood, that Goods of the Enemy, taken on board neutral Ships, ought to be condemned as Prize.

It is evident from Authentic Acts, that the Subjects of *Prussia* never understood that any new Right was communicated to them.

Before the Year 1746, the *Prussians* don't appear to have openly engaged in Covering the Enemy's Property.

The Men of War and Privateers could not abstain from Captures in Consequence of Lord *Carteret's* verbal Assurances in 1744; because they never were, nor could be, known: And there was no Occasion to notify them, supposing them only to promise impartial Justice. For all Ships of War were bound to act, and Courts of Admiralty to judge, according to the Law of Nations, and Treaties.

Till 1746, the *Prussian* Documents were, a Certificate of the Admiralty, upon the Oath of the Builder, that the Ship was *Prussian* built; and a Certificate of the Admiralty, upon the Oath of the Owner, that the Ship was *Prussian* Property.

From 1746, the *Prussians* engaged in the gainful Practice of Covering the Enemy's Goods; but were at a Loss in what Shape, and upon what Pretences, it might best be done.

On board the Ship the *Sœurs*, was found a Pass, bearing Date at *Stettin* the 6th of *October*, 1746, under the Royal Seal of the *Prussia* Regency of *Pomerania*, &c. alledging the Cargo, which

which was Ship Timber, bound for Port l'Orient, to be *Prussian* Property, and, in consequence thereof, claiming *Freedom of the Ship*.

Claiming Freedom to the Ship, from the Property of the Cargo, being quite new, the Proposition was afterwards reversed: And on board a Ship, called the *Jumeaux*, was found a Pass, bearing Date at *Stettin* the 27th of *June* 1747, under the Royal Seal, &c. alledging the Ship to be *Prussian* Property, and, in consequence thereof, claiming *Freedom to the Goods*.

But this Pass was not solely relied on; for there was also found on board the same Ship, another Pass, bearing Date at *Stettin* the 14th of *June* 1747, under the Royal Seal, &c. alledging the Cargo to be *Prussian* Property.

And it is remarkable, that the Oaths, upon which these Passes were granted, appeared manifestly to be false: And neither of the Cargoes, to which they relate, are now so much as alledged to have been *Prussian* Property in said Lists A or B.

It being mentioned, in the said *Exposition des Motifs*, &c. that *Monf. Michell*, in *September* 1747, made verbal Representations to Lord *Chesterfield*, in respect to the Cargo, taken on board the said Ship called the 3 *Sœurs*, which was claimed as *Prussian* Property; and no Mention being made in Lists A and B of the said Cargo; we directed the Proceedings in that Cause to be laid before us, where it appears in the fullest and clearest Manner, from the Ship's Papers and Depositions, that the Cargo was Timber, laden on the Account, and at the Risk, of *Frenchmen*, to whom it was to be delivered, at Port l'Orient, they paying Freight according to Charty-Party. That the *Prussian* Claimant was neither Freighter, Lader, or Consignee; and had no other Interest or Concern in the Matter, than to lend his Name and Conscience: For he swore, that the Cargo was his Property, and laden on or before the 6th of *October*, 1746; and yet the Ship was then in Ballast, and the Whole of the Cargo in Question was not laden before *May* 1747.

Several

The Duke of Newcastle's Letter

Several other *Prussian* Claims, had, in like Manner, come out so clearly to be merely colourable, that Mons. *Andrié*, from his said Letter, ^{29 May,}_{9 June,} 1747, appears to have been ashamed of them.

Third Proposition.

That Lord Carteret, in his said two Conversations, specified, in your Majesty's Name, what Goods should be deemed Contraband.

Answer. The Fact makes this Question totally immaterial, because no Goods condemned as Contraband, or which were alledged to be so, are so much as now suggested to have been *Prussian* Property in the said Lifts A and B; and, therefore, whether as Enemy's Property, or Contraband; they were either Way rightly condemned; and the Bills of Lading being false, the Ships could not be intitled to Freight.

But, if the Question was material, the verbal Declarations of a Minister in Conversation, might shew what he thought Contraband by the Law of Nations; but never could be understood to be equivalent to a Treaty, derogating from that Law.

All the Observations, upon the other Part of these verbal Declarations, hold equally as to this.

Fourth Proposition.

That the British Ministers have said, that these Questions were decided according to the Laws of England.

Answer. They must have been misunderstood; for the Law of *England* says, that all Captures at Sea, as Prize, in Time of War, must be judged of in a Court of Admiralty, according to the Law of Nations, and particular Treaties, where there are any.

There

There never existed a Case, where a Court, judging according to the Laws of *England* only, ever took Cognizance of Prize.

The Property of Prizes being given, during the last War, to the Captors ; your Majesty could not arbitrarily release the Capture, but left all Cases to the Decision of the proper Courts, judging by the Law of Nations and Treaties, where there were any : And it never was imagined, that the Property of a Foreign Subject, taken as Prize on the High Seas, could be affected by Laws peculiar to *England*.

Fifth Proposition.

That your Majesty could no more erect Tribunals for trying these Matters, than the King of Prussia.

Answer. Each Crown has, no doubt, an equal Right to erect Admiralty Courts, for the Tryal of Prizes taken by Virtue of their respective Commissions ; but neither has a Right to try the Prizes taken by the other, or to reverse the Sentences given by the other's Tribunal. The only regular Method of rectifying their Errors, is, by Appeal to the superior Court.

This is the clear Law of Nations ; and, by this Method, Prizes have always been determined, in every other Maritime Country of *Europe*, as well as *England*.

Sixth Proposition.

That the Sea is Free.

Answer. They who maintain that Proposition in its utmost Extent, don't dispute but that when two Powers are at War, they may seize the Effects of each other upon the High Seas, and on Board the Ships of Friends : Therefore that Controversy is not in the least applicable upon the present Occasion*.

* This appears from *Grotius* in the Passages above cited, Lib. iii. cap. i. sect. 5. n. 4. in his Notes. And Lib. iii. cap. 6. sect. 6. in his Notes.

Seventh Proposition.

Great-Britain issued Reprizals against Spain, on Account of Captures at Sea.

Answer. These Captures were not made in Time of War with any Power.

They were not judged of by Courts of Admiralty, according to the Law of Nations, and Treaties, but by Rules, which were themselves complained of, in Revenue Courts: The Damages were afterwards admitted, liquidated at a certain Sum, and agreed to be paid by a Convention, which was not performed. Therefore Reprizals issued; but they were general. No Debts due here to *Spaniards* were stopped; no *Spanish* Effects here were seized. Which leads to one Observation more.

The King of *Prussia* has engaged his Royal Word to pay the *Silesia* Debt to Private Men.

It is negotiable, and many Parts may have been assigned to the Subjects of other Powers. It will not be easy to find an Instance, where a Prince has thought fit to make Reprizals upon a Debt, due from himself to private Men. There is a Confidence that this will not be done; a private Man lends Money to a Prince, upon the Faith of an Engagement of Honour, because a Prince cannot be compelled, like other Men, in an adverse Way, by a Court of Justice. So scrupulously did *England*, *France* and *Spain* adhere to this Public Faith, that, even during the War, they suffered no Enquiry to be made, whether any Part of the Public Debts was due to Subjects of the Enemy, tho' it is certain, many *English* had Money in the *French* Funds, and many *French* had Money in ours.

This Loan to the late Emperor of *Germany*, *Charles* the VIth, in *January* 1734-5, was not a State Transaction, but a mere private Contract with the Lenders, who advanced their Money, upon the Emperor's obliging himself, his Heirs and Posterity, to repay the Principal with Interest, at the Rate, in the Manner,
and

and at the Times in the Contract mentioned, *without any Delay, Demurr, Deduction, or Abatement whatsoever*; and, lest the Words and Instruments made use of should not be strong enough, he promises to secure the Performance of his Contract, *in and by such other Instruments, Method, Manner, Form, and Words, as should be most effectual and valid, to bind the said Emperox, his Heirs, Successors and Posterity, or as the Lenders should reasonably desire.*

As a specific real Security, he mortgaged his Revenues, arising from the Dutchies of *Upper and Lower Silesia*, for Payment of Principal and Interest; and the whole Debt, Principal and Interest, was to be discharged in the Year 1745. If the Money could not be paid out of the Revenues of *Silesia*, the Emperor, his Heirs and Posterity, still remained Debtors, and were bound to pay. The Eviction or Destruction of a Thing mortgaged, don't extinguish the Debt, or discharge the Debtor.

Therefore the Empress-Queen, without the Consent of the Lenders, made it a Condition of her yielding the Dutchies of *Silesia* to his *Prussian* Majesty, that he should stand in the Place of the late Emperor, in respect of this Debt.

The Seventh of the Preliminary Articles, between the Queen of *Hungary* and the King of *Prussia*, signed at *Breslau*, the 11th of *June*, 1742, is in these Words; "Sa Majesté le Roi de *Prusse* se charge du seul Payement de la Somme hypothéquée sur la *Silesie*, aux Marchands *Anglois*, selon le Contract signé à *Londres*, le 7me de Janvier, 1734-5."

This Stipulation is confirmed by the Ninth Article of the Treaty between their said Majesties, signed at *Berlin* the 25th of *July*, 1742.

Also renewed and confirmed by the second Article of the Treaty between their said Majesties, signed at *Dresden* the 25th of *December*, 1745.

In Consideration of the Empress Queen's Cession, his *Prussian* Majesty has engaged to her, that he will pay this Money, *selon*

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le Contract, and consequently has bound himself to stand in the Place of the late Emperor, in respect of this Money, to all Intent and Purposes.

The late Emperor could not have seized this Money, as Reprizals, or even, in case of open War between the two Nations, because his Faith was engaged to pay it, without any *Delay*, *Demurr*, *Deduction*, or *Abatement whatsoever*. If these Words should not extend to all possible Cases, he had plighted his Honour to bind himself, by any other Form of Words, more effectually to pay the Money; and therefore was liable at any Time to be called upon, to declare expressly, that it should not be seized as Reprizals, or in case of War; which is very commonly expressed, when Sovereign Princes, or States, borrow Money from Foreigners. Therefore, supposing for a Moment, that his *Prussian* Majesty's Complaint was founded in Justice, and the Law of Nations, and that he had a Right to make Reprizals in general, he could not, consistent with his Engagements to the Empress-Queen, seize this Money as Reprizals. Besides, this whole Debt, *according to the Contract*, ought to have been discharged in 1745. It should, in respect of the private Creditors, in Justice and Equity, be considered, as if the Contract had been performed; and the *Prussian* Complaints don't begin till 1746, after the whole Debt ought to have been paid.

Upon this Principle of natural Justice, *French* Ships and Effects, wrongfully taken, after the *Spanish* War, and before the *French* War, have, during the Heat of the War with *France*, and since, been restored by Sentence of your Majesty's Courts, to the *French* Owners. No such Ships or Effects ever were attempted to be confiscated, as Enemies Property here, during the War; because, had it not been for the Wrong first done, these Effects would not have been in your Majesty's Dominions. So, had not the Contract been first broke, by Non-Payment of the whole Loan in 1745, this Money would not have been in his *Prussian* Majesty's Hands.

Your Majesty's Guaranty of these Treaties is entire, and must therefore depend upon the same Conditions, upon which the Cession was made by the Empress-Queen.

But

But this Reasoning is, in some Measure, superfluous; because, if the making any Reprizals upon this Occasion be unjustifiable, which we apprehend we have shewn, then it is not disputed, but that the Non-Payment of this Money would be a Breach of his *Prussian* Majesty's Engagements; and a Renunciation, on his Part, of those Treaties.

All which is most humbly submitted to your Majesty's Royal Wisdom.

Jan. 18, 1753.

GEO. LEE.

G. PAUL.

D. RYDER.

W. MURRAY.

LIST

*LIST of all the Prussian Ships taken by British Armaments at Sea, during the
ceeded upon, together with the Judgments given in the Admiralty Courts of Great-*

N ^o . of Ships.	Ships, which (if taken) were restored by the Captors, upon Examination, without either Party applying to a Court of Justice.	Ships and Goods restored, with all Costs and Damages attending the Capture.	Ships restored with Freight, according to the Bills of Lading, for such Goods, which were found to be the Property of the Enemy, and condemned as Prize.	Ships and Goods restored, but without Costs, from Circumstances arising from the Case.
1	La Frederique Amitié, Capitaine Sprenger.			
2				
3		L' Anne Elizabeth, Capt. Daniel Schultz, Costs and Damages 2801 <i>l</i> . 12 <i>s</i> . 1 <i>d</i> .		
4	La Catharine Christine, Capit. Frederick Berend.			
5				
6				
7				
8				
9				
10				
11			L'Aigle D'Or, Capit. Onne Arends.	
12				
13				
14			La Dorothee Sophie, Capit. Piere Kettelbusch. Les Deux Freres Capit. Aug. Augustinus.	
15				
16	Le St. Jean*, Capit. Jean Grosse.			
17	Le Jeune Tobie, Capit. Paul Otto.			
18				Le Petit David, Cap. Michael Bugdahl.

* On the 3d of February, the Duke of Newcastle received a Letter from Mr. Wolters, His Majesty's Agent at Rotterdam, inclosing the following Declaration :

IN the Exposition, which his Prussian Majesty has publish'd, of such Ships of his Subjects, as were taken by the English in the last War ; I have observed, in the List A, N^o. 16, that the Ship *St. John*, John Grosse, Captain, is

last War, as well those detained for Examination only, as those judicially pro-Britain thereupon, tallying with his Prussian Majesty's List marked A.

Ships and Cargoes restored, paying Costs.

In these Cases, it either appeared, that the Ship had not the usual Evidence of Property, according to the Custom of the Sea; or from the Ship Papers, or Examination of the Crew, there appeared just Reason to presume the Cargo to belong to the Enemy, and the Neuter Claimant, declined proving his Property, by strict legal Evidence; and obtained Restitution, on the Faith of his own Affidavit; and, in these Cases, Courts of Admiralty have always made the like Decrees.

Cargoes, or Part of them,

condemned as contraband, and not now alledged, in List A or B, to have been Prussian Property, and therefore were certainly Prize of War.

Appeals from the Admiralty Decrees.

2		Les Jumeaux, Capit. Kruth.	
5	La Dame Juliene, Capit. Martin Prest.		
6	Le Frederick II. Roy de Prusse, Capit. Chretien Schultz.		
7	Le Vaisseau au bon Vent, Capit. Michel Juriansen.		
8		Le Soleil D'or, Capit. Jacob Ridder	
9	La Daageroud, Capit. Martin Sterawien.		
10		Le Fred. II. Roy de Prusse, Capit. Chretien Schultz.	
12	Les Deux Freres, Capit. Jon Hallen.		
13		Le Jeune André, Capit. Henri Barckborn.	
18			Le Petit David Capit. Michael Bugdahl.

is therein mention'd, as having received some Damages to the Prejudice of the Prussian Owners. As the Fact is known to me, as I was the sole Owner of her Cargo, I do hereby, as such, testify the Truth, for the Satisfaction of all whom it may concern. And I cannot conceive how the Prussian Subjects

The Duke of Newcastle's Letter

jects dare demand an Indemnification, which they have already more than received, as I am going to convince them.

In the Month of *November* 1747, I ordered the said Ship to be freighted at *Bordeaux*, and loaded at *Libourne* with 158½ Tons of White Wine. On the 1st of *December* following, that Ship put out to Sea; on the 11th of the said Month, she got as far as the *Downs*, where she was met by an *English* Privateer, called the *Prince of Orange*, who sent six of his Men on board the *Prussian* Ship, and had the *Prussian* Pilot brought on board him, with the Ship-Papers and Documents, in order to their being examined. On the 12th of the said Month, as she lay at an Anchor, a great Storm arose from the W. S. W. which obliged the *Prussian* Captain, with the Consent of his Crew, and of the six *Englishmen*, who were then on board his Ship, to cut his Cable, in order to drive off to Sea. The Ship got afterwards into *Browershaven* Inlet in *Holland*, on the 15th of the said Month of *December*, without any other Damage, than the Loss of Part of her Cable, and of an Anchor, and arrived at *Rotterdam* the 21st of the said Month. All this is proved by the Declaration of both the Captain and his Crew, made, on the 4th of *January* 1748, before *Jacob Bremer*, Notary Publick in *Rotterdam*; and, afterwards, sworn to, on the 6th of the said Month, before the Commissioners of the Chamber of Maritime Affairs.

After the Ship was unloaded, the Captain gave in to me his Account for gross Average; consisting of the following Articles:

1. For the Loss of his Cable and Anchor.
2. For the Maintaining, during eight Days, the six Men, who had been put on Board his Ship by the *English* Privateer.
3. For a Passport, I procured for him, from the *Prussian* Envoy at the *Hague*, which cost 3 or 4 Florins.

I paid him, for my Share, in that gross Average 704 Florins, *Holland* Currency, over and above 105 Florins which I gave Captain *Grosse* as a Present; and 10 Florins 10 Stivers, I gave

as

to Monsieur Michell.

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as a Present to the Crew of his Ship: Besides all this, it cost me 20 Florins, or thereabouts, in *England*, which Mess^{rs} *Simond*, (Brothers) had disbursed, by my Order, for the *Prussian* Pilot, who remain'd on board the Privateer, after the Storm had parted them.

Those who understand the Navigation, and fitting-out of Ships must allow, that the *Prussian* Owners will find themselves more than reimbursed for all their Pretensions, by means of the 839 Florins 10 Stivers, *Holland* Currency, which I have paid them; and that they cannot, with any Foundation, make any other Demands.

All that I have alledged above, can be verify'd by authentic Vouchers (except the Presents or Gratuities to the Captain and his Crew, amounting to 115 Florins 10 Stivers, for which I took no Receipt.) In Witness whereof I have signed this present Declaration. *Rotterdam, January 30, 1753.*

PETER TRAPAUD, Junr.

The above Declaration was signed in my Presence; and the original Vouchers, quoted in the same, have been produced to me. Witness my Hand and Seal, *Rotterdam, January the 30th, 1753.*

(L. S.) *R. WOLTERS.*

*LIST of all the Neutral Ships, taken by British Ships during the last War, in whose
ments given by his Britannick Majesty's Courts of Admiralty thereupon,*

N ^o .	Ships Names.	If taken, released, by the Captors, on Ex- amination, without either Party applying to a Court of Justice.	In what Voyage taken.
1	La Cecile, Capitaine Bois Swensen.	- - - - -	Cette to Altena - -
2	Le Nahring, Capit. Chretien Tiedman.	- - - - -	Rochelle to Bourdeaux -
3	La Demoiselle Jeane, Capit. Joachim Peyn.	- - - - -	Hambourg to Cadiz -
4	Le Carlshavener Weiff,	- - - - -	Hambourg to Cadiz -
	Capit. Jean Holme.		
5	L' Anne Elizabeth, Capit. Chretien Mau.	- - - - -	Hambourg to Cadiz -
6	Le Gustave Prince Royal, Capit. Barthow Mubl.	- - - - -	Hambourg to Cadiz -
7	Le Jeune Benjamin, Capit. Henry Newschilling.	- - - - -	Hambourg to Cadiz -
8	Le Prince Frederic, Capit. Jean Hartmann.	- - - - -	Hambourg to Bilboa and Bayonne
9	Le Marie Joseph, Capit. Feurier Rogue.	- - - - -	Hambourg to Cadiz -
10	L' Union, Capit. Jean Struckmann.	- - - - -	Bourdeaux to Hambourg
11	Le Neptune, Capit. Sonder Heeren.	- - - - -	Nants to Hambourg -
12	Le St. Paul *, Capit. Gent Hinfichren.	- - - - -	Nants to Hambourg -
13	La Couronne, Capit. Pierre Classen.	- - - - -	Nants to Hambourg -
14	La Demoiselle Catherine, Capit. Wilche de Vries.	- - - - -	Rochelle to Altena - -
15	La Concorde, Capit. Claes Eichels.	- - - - -	Rochelle to Hambourg -
16	La Feaune, Capit. Gerbard Roger Altag.	- - - - -	Charente to Hambourg -
17	L' Amitié, Capit. Jean Quimann.	- - - - -	Rochelle to Hambourg -

* On the 20th of January, Affidavits were exhibited in the Court of Admiralty, and Sentence prayed on the Part of the Prussian Claimant, and the Goods were decreed to be restored.

*Cargoes the Subjects of Prussia claim to have been interested; together with the Judg-
tallying with his Prussian Majesty's LIST marked B.*

Judgment as to Ship.	Judgment as to Goods.	For what Cause.	Appealed.
1 Restored	Restored - - - -	On Affidavits of the Property.	
2 Restored	Restored - - - -	On Affidavits of the Property.	
3 Restored	Restored - - - -	On Affidavits of the Property.	
4 Restored	Restored - - - -	On Affidavits of Property.	
5 Restored	Part restored - - Part condemned -	On Affidavits of Property. Want of Affidavits as to the Property.	
6 Restored	Part restored - - Part condemned -	On Affidavits of Property. Want of Affidavits of Property.	
7 Restored	Part restored - - - Part condemned -	On Affidavits of Property. Want of Affidavits of Property.	
8 Restored	Restored - - - -	On Affidavit of Property.	
9 Restored	Restored - - - -	On the Ship-Papers.	
10 Restored	Part restored - - Part condemned -	On Affidavits of Property. Want of Affidavits of Property.	
11 Restored	Restored - - - -	On Affidavits of Property.	
12 Restored	Part restored - - The rest still depending	On Affidavits of Property. Want of Affidavits of Property.	
13 Restored	Restored - - - -	On Affidavits of Property.	
14 Restored	Part restored - - Part condemned -	On Affidavits of Property. Want of Affidavits of Property.	
15 Restored	Part restored - - Part condemned -	On Affidavits of Property. Want of Affidavits of Property.	
16 Restored	Part restored - - - Part condemned -	On Affidavits of Property. Want of Affidavits of Property.	
17 Restored	Part restored - - Part condemned -	On Affidavits of Property. Want of Affidavits of Property.	

Continuation of a List, &c.

N ^o .	Ships Names.	If taken, released, by the Captors, on Examination, without either Party applying to a Court of Justice.	In what Voyage taken.
18	Le Jeune Prince Chretien, Capit. <i>Jean Corneille Leuwen.</i>	- - - - -	Marseilles to Hambourg
19	La Dem ^e . Marguerite, Capit. <i>Henri Bielenberg.</i>	- - - - -	Bourdeaux to Hambourg
20	Le Roxier, Capit. <i>Pierre Classen.</i>	- - - - -	Bourdeaux to Hambourg
21	La Marie Sophie, Capit. <i>Chretien Gregerfen.</i>	- - - - -	Rochelle to Hambourg
22	L'Anne Sophie, Capit. <i>Henri Horn deWo'gast.</i>	Released. - - -	Bourdeaux to Konigsberg
23	Le Hop de Danzig, Capit. <i>Conrade Harlach.</i>	- - - - -	Bourdeaux to Dantzick
24	La Jeune Jeane, de <i>Petersbourg</i> , Capit. <i>Thomas Siefers.</i>	- - - - -	Bourdeaux to Hambourg
25	Le Gregoire de Breme, Capit. <i>Jacob Muller.</i>	- - - - -	Bourdeaux to Hambourg
26	La Jeune Catherine, Commandé par le Cap. <i>Kupper.</i> ensu te par le Cap. <i>Elker.</i>	Released. - - -	Bourdeaux to Hambourg
27	Les Six Soeurs, de <i>Lubeck</i> , Capit. <i>Pierre Zaan.</i>	- - - - -	Bourdeaux to Lubeck -
28	La Ste. Anne, de <i>Hambourg</i> , Capit. <i>Abraham Peterson.</i>	- - - - -	Bourdeaux to Hambourg
29	Le Jeune Eldert, de <i>Hambourg</i> , Capit. <i>Gaspert Auven.</i>	- - - - -	Roan to Hambourg -
30	Le Juste Henri, de <i>Hambourg</i> , Capit. <i>Henri Elkes.</i>	- - - - -	Bourdeaux to Hambourg
31	L'Elizabeth, Capit. <i>Soeren Paterfon.</i>	- - - - -	Hambourg to Bourdeaux
32	La Demoiselle Claire, Capit. <i>Herman Classen Prieß.</i>	- - - - -	Hambourg to Roan -
33	L'Adolphe Frederic, Capit. <i>Jonas de Haspen.</i>	- - - - -	Marseilles to Hambourg

tallying with the Prussian List B.

Judgment asto Ship.	Judgment, as to Goods.	For what Cause.	Appealed.
18 Restored	Restored - - - -	On Affidavits of Property.	
19 Restored	Part restored - - Part condemned - -	On Affidavits of Property. Want of Affidavits of Property.	
20 Restored	Restored - - - -	On Affidavits of Property.	
21 Restored	Part restored - - - Part condemned -	On Affidavits of Property. Want of Affidavits of Property.	
22			
23 Restored	Restored - - - -	On Affidavits of Property.	
24 Restored	Restored - - - -	On Affidavits of Property.	
25 Restored	Part restored - - Part condemned -	On Affidavits of Property. Want of Affidavits of Property.	
26			
27 Restored	Restored - - - -	On Affidavits of Property.	
28 Restored	Part restored - - Part condemned -	On Affidavits of Property. Want of Affidavits of Property.	
29 Restored	Part restored - - Part condemned -	On Affidavits of Property. Want of Affidavits of Property.	
30 Restored	Part restored - - Part condemned -	On Affidavits of Property. Want of Affidavits of Property.	
31 Restored	Restored - - - -	On Affidavits of Property.	
32 Restored	Restored - - - -	On Affidavits of Property.	
33 Restored	Restored - - - -	On Affidavits of Property.	

REMARKS

With regard to the Ship Anne Elizabeth, Capt. Daniel Shultz, bound from Bourdeaux to Amsterdam.

THE Merchants named at *London* for regulating the Damages and Costs proceeding from her Detention, took into Consideration, that she was *Stetin* built, of about 200 Tons, navigated by 12 Men, including the Master, and allowed to the Ship,

For Mens Wages, during six Months Detention, Victualling, Wear and Tear, at 60 <i>l.</i>	-	£. 360
For the Captain's <i>extra</i> Charges	10 : 10	
For Protest, &c.	- 5	
For stowing the Ship	- 1	
For Pilotage and Light-Money	10 : 10	
For Mr. <i>Lamb's</i> Commission	10 : 10	
For sundry Repairs made to the Ship	£. 522	
Deducted from 165 <i>l.</i> new Work $\frac{1}{2}$ Wear	£. 55	
Per severals more	51	
	— 106	
	-	416
For Mr. <i>Spellerberg's</i> Commission on the Ship	- 25	
For ditto disburfed	- 21 : 4	
For Notary <i>Willet</i>	- 4 : 15	
	—	864 : 9

For

the Ship Anne Elizabeth.

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For Loss to the Owners in the Cargo was allowed,

For Mr. *Andre Loche,*

14 $\frac{1}{2}$ Fat white Wine, which cost
 £.6210 : 10, at 57 $\frac{1}{2}$ d. with
 5 per cent. Agio - Fl. 3125 : 3
 Interest for 9 Months at 5 per cent. 117 : 4

3242 : 7

And the neat Proceed, the Insurance
 at *Amsterdam* deducted, is 1544 : 13

Loss Fl. 1697 : 14

at 11 Fl. £.154 : 5 : 10

For *Adrian Floris Raap,*

4 Fats Wine cost £.1566, at
 56 $\frac{1}{2}$ d. with 5 per cent. Agio Fl. 778 : 9
 Neat Proceed 419 : 10

Fl. 358 : 19

Per 800 Fl. Insurance 32
 9 Months Interest 30

at 11 Fl. Fl. 420 : 19 38 : 5 : 4

For *Michael Goris,*

5 Fats Wine, £.1690 : 13. at 55 $\frac{1}{2}$ 778 : 8
 Agio 5 per cent. 38 : 18

817 : 6

Neat Proceed, with Deduction
 of Insurance - 659 : 6

158

Per Fl. 817 : 6. Interest for 9
 Months - 30 : 13

at 11 Fl. Fl. 188 : 13 17 : 3

£.209 : 14 : 2

For

Remarks with regard to

For *Daniel La Fargue*, Brought over £. 209 : 14 : 2

16 $\frac{1}{2}$ Fatts of Wine £. 6046 : 4 : 6.
at 56 $\frac{1}{4}$ d. and 5 per cent. Agio Fl. 3002 : 6

Neat Proceed, with the Insurance
deducted - - - 1103 : 17

Fl. 1898 : 9

Interest for 9 Months on Fl. 3002 : 6.
at 5 per cent. - 112 : 12

at 11 Fl. Fl. 2011 : 1 £. 182 : 16 : 5

For *Aconjard de Gris*,

50 Fatts Wine Fl. 17625 : 12.
at 55 $\frac{1}{4}$ d. and 5 per cent. Agio 8598

Sold for Fl. 5447 : 18
Charges 2207 : 3

3240 : 5

Fl. 5357 : 15

Insurance on Fl. 9000 a 3 $\frac{1}{2}$
Policy - 2

Interest Fl. 8598 for 9 Months 322 : 8

at 11 Fl. Fl. 5997 : 3 545 : 3 : 11

For *Herman Draveman*,

12 Fatts Wine £. 2962 at 55 $\frac{1}{4}$
with 5 per cent. - Fl. 1440 : 10

Neat Proceed 1091 : 3 $\frac{1}{2}$

Fl. 349 : 6 $\frac{1}{2}$

Interest Fl. 1440 : 10. for 9 Months 54 : $\frac{1}{2}$

at 11 Fl. Fl. 403 : 9 36 : 13 : 4

£. 974 : 7 : 10

For

the Ship Anne Elizabeth.

521

Brought over £. 974: 7: 10

For Capt. *Daniel Shultz*,

100 Bushels Chesnuts £. 1442 £. *Sterl.* 61: 11

Sold neat for

24: 10: 6

37: 0: 6

For Ditto,

15 Casks of Wine £. 1023. £. *Sterl.* 85: 10

Sold neat for

42: 16: 4

42: 13: 8

For *P. Ashe*,

13½ Fatts Wine £. 5871: 11. at

56d. with 5 per cent.

Fl. 2877: 1

Neat Proceed

1651: 4

Fl. 1225: 17

Interest Fl. 2877: 1 for 9 Months

107: 18

at 11 Fl.

Fl. 1333: 15

121: 5

For *Jean Fonvielles*,

150 Casks Muscatelle £. 5280, at 56½

and 5 per cent.

2621: 17

Ditto

-

£. 4274: 3: 10

at 56 and 5 per cent.

2094: 7

22½ Fatts Wine

120 Chests Prunes

£. 18929: 6: 6

33 Casks

} Juniper

} at 56 and 5 per

111 Sacks

} cent.

9275: 8

5 Fatts red Wine £. 1661: 16

at 55½, and 5 per cent.

807: 1

10½ Fatts Ditto £. 4488: 9

at 56, and 5 per cent.

2199: 7

Fl. 16998

Neat Proceed

10238: 14

Fl. 6759: 6

Interest at 5 per cent. for 9 Months

on Fl. 16998

637: 8

at 11 Fl.

Fl. 7396: 14

672: 8: 6

£. 1847: 15: 6

Remarks with regard, &c.

Brought over	£.1847:15: 6
Mr. Spellerberg's Commission on the Cost of the Cargo, amounting in the Whole to £.79972 : 4 : 10 at 31 $\frac{1}{2}$ d. £.3498:15:9. at 2 $\frac{1}{2}$	87: 9: 6
Damage on the Cargo	£.1935: 5
Ditto on the Ship, as above	864: 9
Small Charges	1:18: 1
	£.2801:12: 1

Which shews that in making up these Accounts of Damages at *London*, in the Court of Admiralty, the Opinion of impartial Merchants was followed, and due Attention paid to what strict Justice required.

Extract from the Letters written by the *Dutch* Ministers in *France* and *England*, to the Pensionary *J. de Witt*, at the *Hague*, from *An. 1653* to 1667.

W. Boreel, the *Dutch Ambassador* at *Paris*, to the Pensionary,
Dec. 26, 1653.

I Perceive well enough that *France* would go farther in regard to the *Marine Treaty*, which I am soliciting, if the War with *Spain* was not a Hindrance. They now maintain the Maxim, that their Enemies must in no Manner be protected or served by any of the Ships belonging to the Subjects of their High Mightinesses, for the carrying their Goods; on Peril that if any such Goods be met with in *Dutch* Ships, they shall be made good Prize, and as such be taken out and confiscated: which however is departing from a Law they maintained in former Times, under *Francis* the First, and *Henry* the Third, which was, *Que la Robe d'Ennemi confisque celle d'Ami*: Whereas now in *Dutch* Ships the Goods belonging to their and other neutral Subjects shall not be confiscated.

I have made all possible Endeavours to obtain, that free Ships should make free Goods, but as yet without Success.

From Pensionary De Witt's Answer, dated the 8th Jan. 1654.

I observe from yours of the 26th December, that notwithstanding you used all your Endeavours, you could not obtain, that free Ships should make free Goods; whereupon I cannot but believe that the *French* Ministers must misapprehend the Matter, or you explain it wrong; since in the Draughts of the Treaty sent over, it stands clearly explained, that free Ships shall make free Goods; *Que les Navires qui traffiqueront & seront libres, & rendront aussi toute leur charge libre, bien qu'il y eut dedans de la marchandise, même des Grains & Legumes appartenants aux Ennemis.*

Extract from Letters

From Mr. Boreel's Letter, dated at Paris, the 15th Jan. 1654.

It is true, that taking the Sense of the Words from the first Article of the Provisional Treaty, together with the 18th Article of this proposed Treaty, they confirm clearly your Opinion. But they say that by the Words, *A free Ship shall make free Goods*, are only meant Goods of Friends, but not of Enemies: And in the same Manner they misconstrue the Declaration of the 29th of May, 1651, which the King made to me, and which is now subsisting, and must subsist till we come to a nearer Treaty of Marine and Alliance. It says, *Le Roi fait defense, &c. de ne point prendre ni amener dans les Ports de France des Navires Hollandois chargés des Marchandises, quand même elles appartiendront aux Ennemis, pourvu qu'ils ne transportent pas des Troupes, Marchandises de Contrabande, &c.*

What can be clearer than these Words? But the People here interpret them as they please, and make Use of their Power in judging and executing: And although I complain continually, it is without Fruit and Redress.

By these Letters it appears clear enough, that the *French* first began to misconstrue the Sense of the Words of free Ships making free Goods.

From Ambassador William Nieupoort's Letter, dated at London, the 12th May, 1656, to the Pensionary De Witt.

I am afraid that the Gentlemen here will not admit in the Treaty of Marine, the Rule of free Ships making free Goods, and *vice versa*; nor agree to the Formularies of Passports proposed: However, I shall use my best Endeavours towards it, and as soon as I can obtain any Thing from them upon Paper, I shall send it over.

From a Letter of the Pensionary, dated the 26th May, 1656, to William Nieupoort, at London.

Their High Mightinesses, immediately after having received the Draughts sent of a Marine Treaty, gave it to the Commissioners, who, upon taking it into Consideration, quickly dis-

discovered that the principal Point whereupon this Treaty should be built which is to prevent unjust Searches when they meet at Sea, viz. "That free Ships make free Goods," was left out; and it is impracticable for the *Dutch* to agree to it in the Manner it is proposed. Wherefore, &c.

From a Letter of the Pensionary, dated the 23d Feb. 1657, to William Nicupoort at London.

And I can assure you, that, if by concluding a *Marine Treaty* their High Mightinesses can only obtain the End proposed in their last Resolutions, tho' in what they most desire, namely, that free Ships shall make free Goods, it should remain deficient, it might take away some of the Animosity, and prevent the Persons at the Helm from harkening to any of the Advances made by *Spain*, and other Potentates, to their High Mightinesses.

Which is enough to shew, that the great Pensionary *De Witt*, whilst *Cromwell* governed in *England*, could not gain upon him his favourite Maxim, that free Ships should make free Goods.

Extract from Sir *Leonine Jenkins'* Memoirs, who was Judge of the Court of Admiralty at *London*.

To the Lords Commissioners for Prizes.

Westminster, 17 Sept. 1666.

My Lords,

THE *St. George* of *Hamburg* was taken between three or four Leagues of the *Vlie*, plying in a contrary Wind, as the Master deposes, her Course from *Hamburg* to *Rouen*. Being brought into *Harwich*, I do not find that any of her Company was examined; which is an Omission your Lordships, I doubt not, will think worth preventing for the future. The Master, who alone is come up hither, I have caused to be examined. He swears that the Ship and Lading do entirely belong to *Hamburg*, that his Ship has not been in *Holland* these nine Years; that his Papers are all true, and his Company all free. His Sea-Brief makes likewise nine Burghers of *Hamburg* to be Owners of this Ship; and I find her upon the first List which that City gave in to his Majesty, upon Occasion of this War. The Bills of Lading found on board are 35 in all, and there are Attestations of the Oaths which the respective Proprietors have made before

Extract from Sir Leonine Jenkins' Memoirs.

fore their Magistrates, corresponding exactly with the several Particulars in the Bills of Lading; which Attestations are of more Weight and Credit, in that they were obtained before the setting-out of this Ship. The Cargo is Lead, Wool, Steel, Wire and Copper-ware; and they are not only *Hamburgers* (as the Master it seems apprehended) that are the Laders of this Ship, but there are others of *Breslau*, *Bremen*, *Antwerp*, and *Dantzic*, that are made, in the Attestations, Proprietors of several Parcels of this Lading.

Upon Occasion of these Attestations, I shall crave Leave to offer unto your Lordships, what has fallen not long since under my Observation. Those *Hamburgers* (as there are some) who favour the *English* Trade, make no Difficulty (in order to obtain the Attestations in common Form) to swear, that those very Goods, which *Englishmen* do buy in *Hamburg* with their own Money, and which are to be delivered here in *England* upon the proper and sole Account of *Englishmen*, as soon as they come to safe Port, do belong to the Laders, *i. e.* *Hamburgers*; and that no other Person can or ought to pretend to any Interest in them. The Way that they save this Case of Conscience (as I have seen them explain themselves in their Letters) is, by taking the Risk of the Goods upon themselves while the Goods are at Sea and in Danger of the Enemy. And for so doing, they have so much *per Cent.* Yet this Risk of theirs is so limited, that as it respects no other Danger of the Sea, but that from the Enemies of this Crown, so they are bound to no more but to use their utmost Endeavours and Interest to make out a Claim, the Loss being the *Englishman's* if the Sentence should by violent and exorbitant Proceedings go against the *Hamburger*.

It is not improbable, but that the *Dutch* and *French* have likewise such Friends at *Hamburg*, as will lend them their Names, and their Consciences too, upon the like Terms. But the sure Way to obviate the Fraud of such mental Reservations and Equivocations (for against downright Perjury there is no Fence, as long as Oaths are, and there must be something or other, decisive in Judgment) would be, as I do, with all Submission possible to your Lordships, conceive, That the Senate would please to order all Deponents to be interrogated in such a Form, as the
King's

King's Proctor shall send hence to the Deputies for taking these Oaths; or else that such Laders, as desire a Benefit here from Attestations, should satisfy his Majesty's Minister in that Town touching their respective Properties. Yet I must not deny that this amounts to little more than what is already done, if I be truly informed by the Secretary of the *Hamburgh* Agent; for, letting him know that I desired to learn from his Masters, what the Solemnity and Circumspection was, which the Deputies use at *Hamburgh* before they grant their Attestation under Seal; he writes unto me that every Man that obtains that Attestation swears explicitly, that none in Enmity with the King of *Great-Britain* has any Interest in the Goods, touching which he makes Oath.

Among the Laders, my Lords, I found two Names which I guessed to be *French*, and the Secretary who solicits this Business could not but acknowledge the Persons (*Du Prié* and *Heron*) to be *Frenchmen* born. But the Salvo that he and the Shipper gave me upon Oath is, that *Du Prié* had lived in *Hamburgh* with his Wife and Family for above these 20 Years; and that the other had lived there likewise these 8 Years. Which regularly is sufficient in Law to excuse him, as I humbly conceive, from being subjected to the same Reprizals with the rest of his Countrymen. The *Hamburghers* at least do conceive so, for this Shipper swears, that he refused taking in *Heron's* Goods, till the Senate sent a public Officer to let him know, that he was to trade for him as freely, as for any Burgher of their City. If this be true, it is a strong Presumption that the rest of the Laders are, as their Attestations speak them to be, in *bona fide*. I am, &c.

L. JENKINS.

From the *Corps Diplomatique du Droit de Gens*.
Pag. 238. Tom. VII. P. II. $\frac{12}{12}$ Août.

TRAITE & Convention entre Guillaume III. Roi de la Grande Bretagne & les Seigneurs Estats Généraux des Provinces-Unies, pour l'Union & le Concert de leurs Armes contre la France, et principalement pour interdire toute sorte de Commerce ou Trafic avec les Sujets du Roi T. C. non seulement de la part de l'Angleterre & des Provinces-Unies, mais aussi de la part des Sujets des autres Rois, Princes, ou Estats.

A Whitehall le $\frac{12}{12}$ d'Août 1689.

(Tiré de la Registrature d'Estat de la Chancellerie de la Cour de sa Majesté Imperiale. Fasc. 23.)

D'AUTANT que le Roi Très-Chrétien a déclaré la Guerre aux Estats Généraux des Provinces-Unies des Pais-Bas & autres Alliés du Roi de la Grande Bretagne, & le Roi de la Grande Bretagne l'ayant déclarée au Roi T. C. il importe audit Seigneur Roi de la Grande Bretagne, & aux dits Seigneurs Estats Généraux de faire le plus de dommage qu'il sera possible à l'Ennemi commun, pour le réduire à une Paix juste & raisonnable, & à des Conditions qui pourront rétablir le repos & la tranquillité de la Chrétienté: & comme pour cela il est nécessaire qu'on employe toutes ses Forces, & particulièrement qu'on fasse en sorte que tout Commerce & Trafic avec les Sujets dudit Roi T. C. soit effectivement rompu & interdit, pour ôter audit Roi & à ses Sujets les moyens de fournir à une Guerre, qui pourra autrement par sa durée être très nuisible, et causer une grande effusion de sang chrétien; & Sadite Majesté de la Grande Bretagne & lesdits Siegneurs Estats Généraux ayant, pour mieux y parvenir, ordonné à leurs Flottes de faire voile vers les costes de France & de bloquer tous les Ports, Havres, & Rades du dit Roi T. C.

I. Il est conclu et arrêté entre Sadite Majesté de la Grande Bretagne, et lesdits Seigneurs Estats Généraux, qu'il ne sera pas permis aux Sujets dudit Roi, ni desdits Estats, avec leurs propres Vaisseaux ni avec les Vaisseaux d'aucun autre Royaume, Pais ou Estat, de trafiquer, ni de faire aucun Commerce avec
les

les Sujets du Roi T. C. en manière quelconque ; ni ne pourront emmener dans les Ports ou Païs dudit Seigneur Roi, ou desdits Seigneurs Estats, ni dans aucun autre Païs, les Marchandises & Denrées des Païs & Terres de l'obéissance du Roi T. C., ni amener auxdits Païs & Terres aucunes Marchandises ou Denrées quelconques sur peine de Confiscation desdites Marchandises & Denrées & des Vaisseaux qui y seront employés.

II. Et comme plusieurs Rois, Princes & Estats de la Chrétienté sont déjà en Guerre contre le Roi T. C. & qu'ils ont déjà défendu, ou défendront dans peu, tout Commerce avec la France, il est convenu entre Sadite Majesté de la Grande Bretagne & lesdits Seigneurs Estats Généraux, que si, pendant cette Guerre, les Sujets d'aucun autre Roi, Prince, ou Estat entreprendront de trafiquer ou de faire aucun Commerce avec les Sujets du Roi T. C., ou si leurs Vaisseaux & Batimens seront rencontrés faisant voile vers les Ports, Havres, ou Rades, de l'obéissance dudit Roi T. C. sous un soupçon apparent de vouloir trafiquer avec les Sujets dudit Roi, comme ci-dessus, & si les Vaisseaux appartenants aux Sujets d'aucun autre Roi, Prince ou Estat, seront trouvés en quelque endroit que ce soit, chargés des Marchandises ou Denrées pour la France, ou pour les Sujets du Roi Très-Chrétien, ils seront pris & saisis par les Capitaines des Vaisseaux de Guerre, Armateurs, ou autres Sujets dudit Seigneur Roi de la Grande Bretagne & desdits Seigneurs Estats, & seront réputés de bonne Prise par les Juges competans.

III. Il est conclu & arrêté que ledit Seigneur Roi de la Grande Bretagne, & lesdits Seigneurs Estats notifieront au plûtôt ce Traité & Accord à tous les Rois, Princes & Estats de l'Europe, qui ne sont pas en Guerre contre la France, & que lesdits Rois, Princes & Estats soient en même tems informés que si leurs Vaisseaux, ou Batimens de leurs Sujets, sortis en Mer avant cette Notification, seront trouvés faisant voile vers les Ports, Havres ou Rades de l'obéissance du Roi T. C. ils seront obligés par les Vaisseaux dudit Seigneur Roi de la Grande Bretagne, & desdits Seigneurs Estats de rebrousser chemin incessamment ; & que si les Vaisseaux ou Batimens desdits Rois, Princes ou Estats, ou de leurs Sujets, seront ren-

Traité entre la Grande Bretagne

contrés faisant voile desdits Ports, chargés des Marchandises, ou Denrées de France, lesdits Vaisseaux ou Batimens seront obligés de s'en retourner auxdits Ports, & d'y laisser lescdites Marchandises & Denrées, à peine de Confiscation; & qu'en cas que les Vaisseaux ou Batimens desdits Rois, Princes, & Estats, ou de leurs Sujets, sortis en Mer après ladite Notification, seront trouvés faisant voile vers les Ports, Havres, ou Rades de l'obéissance du Roi T. C. ou des Ports dudit Roi, ils seront saisis & confisqués avec leurs Marchandises & Denrées comme de bonne Prise: & quant aux Princes & Alliés, qui sont déjà en Guerre contre la France, il est aussi arrêté & convenu que Notification leur sera donnée au plutôt de ce que dessus, & qu'ils soyent en même tems priés de vouloir concourir à des moyens si nécessaires à l'intérêt commun, & de donner & faire executer des Ordres qui tendent à la même fin.

Ce present Traité sera ratifié par Sa Majesté & lesdits Seigneurs Estats Généraux, & les Ratifications seront échangées, dans l'espace de six Semaines, si ce n'est qu'un Traité d'une Alliance offensive & defensive entre Sa Majesté & lesdits Seigneurs Estats Généraux soit conclû & signé avant l'expiration de ce Terme, auquel cas ce present Traité y sera compris & confirmé. Cependant il est arrêté, & convenu qu'on ne laissera pas de faire executer de part & d'autre, tous & chacun les Articles de ce Traité, ponctuellement & de bonne foi, de même que si les Ratifications étoient déjà échangées. Fait à Whitehall le 12^{me} Jour d'Août 1689.

(L.S.) Carmarthen P.

(L.S.) Halifax C. P. S.

(L.S.) Shrewsbury.

(L.S.) Nottingham.

(L.S.) T. Wharton.

(L.S.) H. Schimmelpenninck
van der Oye.

(L.S.) N. Witzem.

(L.S.) W. de Nassau.

(L.S.) Arnaut van Citters.

(L.S.) E. de Weede.

Article séparé.

IL a été convenu de part & d'autre que Notification sera donnée au plutôt de ce qui est contenu dans ce Traité, non seulement aux Ministres des Rois, Princes & Estats interessés qui se trouveront auprès de sa Majesté & desdits Seigneurs Estats Généraux, mais aussi à ceux qui sont aux Cours Etrangères auprès des Rois, Princes & Estats respectivement; & de plus, il a été arrêté qu'en cas que l'une ou l'autre Partie vint à être incommodée ou troublée à cause de l'exécution du présent Traité ou d'aucun Article d'icelui, Sa Majesté Britannique & les Hauts & Puissants Seigneurs Estats promettent & s'obligent de se garantir l'un l'autre à cet égard.

The END of the FIRST VOLUME.

APPENDIX.

WE mentioned in the preceding *Essay on Insurance*,
 Page 20. a famous Case that was tried before the
 House of Lords in February 1754. In the Course of this
 Trial, in which the Honour of the Judges was thought
 to be concerned, it was argued with great Learning, for
 two Days, wherein consists the Difference between Insuring
 on a Ship at Interest or at Loss, and Insuring on a Ship
 valuing her at a certain Sum, without any Account to be given
 of that Value. The two following States of the Case had been
 printed and delivered to their Lordships for their Information.

George Fitz-Gerald, of London, *Mer-*
chant, surviving Partner of George
Fitz-Gerald the elder, } Plaintiff
in Error.

Charles Pole, of London, *Merchant,* } Defendant
in Error.

The CASE of the Plaintiff in Error.

PETER JOYCE, a Mariner, being a Part-owner of One Moiety
 of a Ship called the *Goodfellow* Privateer, together with the
 other Owners, fitted her out in a warlike manner, to cruise
 against his Majesty's Enemies; and obtained a proper Commis-
 sion for that Purpose from the Lords of the Admiralty: Mr. Joyce,
 being himself the Master of the Ship, and abroad, employed
 Messieurs George Fitz-Gerald, Uncle and Nephew, and Part-
 ners, to make an Insurance for his Interest and Use: They ac-
 cordingly procured a Policy of Insurance for 1000 *l.* particularly
 set forth hereafter, to be signed by several Under-writers, among
 whom the Defendant Charles Pole under-wrote for 100 *l.* on the
 31st August 1744.

Mr. Geo. Fitz-Gerald the elder died in March 1743; and the
 Right of Action on this Policy survived to Mr. George Fitz-
 Gerald, the now Plaintiff.

A famous Insurance Cause

The Purpose for which the *Goodfellow* Privateer was fitted out, and employed, during the Time for which the Insurance was made, being, on the 14th Day of *June* 1744, totally defeated by a Mutiny of the Sailors on board, their Desertion from her, and Carrying off the Fire-arms belonging to the Ship;

Action
brought.
Hilary Term,
1748.

The Plaintiff, in *Hilary* Term 1748, on the Behalf, and for the Use, of *Peter Joyce*, brought an Action of the Case, in the Court of King's-Bench, against the Defendant *Charles Pole*; in which he declares as follows;

Declaration

WHEREAS on the Thirty-first Day of *August* in the Year of our Lord One thousand Seven hundred and Forty-four, the said *George* the elder, and *George* the younger, whom the said *George* the younger hath survived, were Partners together in the way of Trade and Merchandize, to wit, at *London* aforesaid, in the Parish of *St. Mary Le Bow*, in the Ward of *Cheap*; and the said *George* the elder, and *George* the younger, being so Partners together, on the same Day and Year, at *London* aforesaid, in the Parish and Ward aforesaid, according to the Custom of Merchants, caused to be made a certain Writing, or Policy of Insurance; purporting thereby, and containing therein, That the said *George* the elder, and *George* the younger, by the Names of *George Fitz-Gerald*, and Company, as well in his own Name, as for and in the Name and Names of all and every other Person or Persons to whom the same did, might, or should, appertain, in Part, or in All, did make Assurance, and causeth himself and them, and every of them, to be insured, lost or not lost, at and from *Jamaica*, to any Ports and Places where and whatsoever, at Sea or Shore, a cruising from Port to Ports, and Place to Places, for and during the Term and Space of Four Calendar Months, upon the Body, Tackle, Apparel, Ordnance, Munition, Artillery, Boat, and other Furniture, of and in the good Ship or Vessel called the *Goodfellow* Privateer, whereof was Master, under God, for that present Voyage, *Peter Joyce*, or whosoever else should go for Master in the said Ship, or by whatsoever other Name or Names the same Ship, or the Master thereof, was or should be named or called; beginning the Adventure upon the said Ship, &c. from and immediately following the Fourteenth Day of *June* then last; and so should continue and endure until the said Ship, with all her said Tackle, Apparel, &c. should be arrived at any Ports and Places where and whatsoever,

The Policy.

soever, a cruising from Port to Ports, and Place to Places, *for and during the Term and Space of Four Calendar Months*, commencing as above-written, without Prejudice to that Insurance; the said Ship, &c. for so much as concerned the Assured, was and should be valued (One Half-part of the Ship) at One thousand Pounds Sterling, without further Account to be given by the Assured for the same. Touching the Adventures and Perils which they the Assurers were contented to bear, and did take upon them, in that Voyage they were, of the Seas, Men of War, Fire, Enemies, Pirates, Rovers, Thieves, Jettizons, Letters of Mart and Countermart, Surprisals, Takings at Sea, Arrests, Restraints, and Detainments, of all Kings, Princes, and People, of what Nation, Condition, or Quality, soever, Barretry of the Master, and Mariners, and of all other Perils, Losses, and Misfortunes, that had or should come to the Hurt, Detriment, or Damage, of the said Ship, &c. or any Part thereof: And in case of any Loss or Misfortune, it should be lawful to the Assured, their Factors, Servants, and Assigns, to sue, labour, and travail, for, in, and about, the Defence, Safeguard, and Recovery, of the said Ship, &c. or any Part thereof, without Prejudice to that Insurance; to the Charges whereof they the Assurers would contribute each one according to the Rate and Quantity of his Sum therein assured: And it was agreed by them the Insurers, That that Writing, or Policy of Assurance, should be of as much Force and Effect as the surest Writing, or Policy of Assurance, theretofore made in *Lombard-street*, or in the *Royal Exchange*, or elsewhere in *London*: And so they the Assurers were contented, and did thereby promise and bind themselves, each for his own Part, their Heirs, Executors, and Goods, to the Assured, their Executors, Administrators, and Assigns, for the true Performance of the Premises; confessing themselves paid the Consideration due unto them for that Assurance by the Assured, at and after the Rate of Twenty Guineas *per Cent.* And in case of Loss (which God forbid!) the Assured to abate but Two Pounds *per Cent.* the Assurers being *free from all Average*; as by the said Writing, or Policy of Assurance, it doth and may more fully appear: Of which said Writing, or Policy of Assurance, so made, as aforesaid, he the said *Charles*, afterwards, to wit, on the said Thirty-first Day of *August*, in the said Year of our Lord One thousand Seven hundred and Forty-four, at *London* aforesaid, in the Parish and

A famous Insurance Cause

Ward aforesaid, had Notice; and thereupon he the said *Charles*, afterwards, to wit, on the same Day and Year aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, in Consideration that the said *George* the elder, and *George* the younger, at the special Instance and Request of the said *Charles*, had undertaken, and then and there faithfully promised the said *Charles* to perform and fulfil every thing in the said Writing, or Policy of Assurance, mentioned on their Parts and Behalfe to be performed and fulfilled: and had then and there paid to the said *Charles* Twenty Guineas as a Reward for the Assurance of One hundred Pounds upon the said Premises mentioned and contained in the said Writing, or Policy of Assurance; he the said *Charles* undertook, and then and there faithfully promised the said *George* the elder, and *George* the younger, that he the said *Charles* would become, and he did then and there become, an Assurer to the said *George* the elder, and *George* the younger, for the Sum of One hundred Pounds, on the Premises mentioned in the said Writing, or Policy of Assurance; and that he the said *Charles* would perform and fulfil every thing in the said Writing, or Policy of Assurance, contained to be performed on his the said *Charles's* Part and Behalf, as such an Assurer, as to the said One hundred Pounds by him so assured; and then and there subscribed the said Writing, or Policy of Assurance, for the Assurance of the said One hundred Pounds: And the said *George*, the now Plaintiff, further saith, The said Insurance, so made by the said *George* the elder, and *George* the younger, as aforesaid, was made for and on account of, and in Trust for, and for the Use and Benefit of, *Peter Joyce*; and that the Interest which the said *Peter Joyce*, at the Time of making the said Insurance, as aforesaid, and during the said Cruize and Voyage hereafter mentioned, had in the said Ship, being a Privateer, amounted to a large Sum of Money, to wit, Two thousand Pounds, and upwards; and that the said Ship, on the said 14th Day of *June*, in the said Writing, or Policy of Assurance, mentioned, in the said Year of our Lord One thousand Seven hundred and Forty-four, being at *Jamaica* aforesaid, in Parts beyond the Seas, in good Safety, set sail and departed from thence in and upon her said intended Voyage a cruising, according to the Intention of the said Writing, or Policy of Assurance; and, from and after the said Fourteenth Day of *June*, was a cruising from Port to Ports, and Place to Places, until the said Ship

Ship afterwards, and within the said Four Calendar Months, commencing from the said Fourteenth Day of *June*, to wit, on the Twenty-third Day of *September*, in the said Year of our Lord One thousand Seven hundred and Forty-four, then sailing upon the high Seas, and at a great Distance from *Jamaica* aforesaid, and, proceeding in her said Voyage, was, in a mutinous manner, by Force and Arms, against the Will of the then Master and Officers of the said Ship, seized, taken, restrained, and detained, by the greatest Part of the Mariners then on board her; and the Command, Direction, and Government, thereof, were taken from the said Master; and the said Ship was not permitted to sail and proceed in her said Voyage a cruising any longer; but was then and there, contrary to and against the Will of the said Master and Officers, by the said Mariners, in a mutinous manner, carried back again to *Jamaica* aforesaid; where the said Mariners afterwards, to wit, on the Thirtieth Day of the same *September*, being then and there arrived with the said Ship, *against the Will of the said Master and Officers, ran away from the said Ship, with the Boats belonging to the same Ship, and totally quitted and deserted her; whereby, and by means whereof, the said Ship did not, nor could not, perform her said Voyage a cruising, for and during the said Four Calendar Months, according to the Intention of the said Writing, or Policy of Assurance; but, from the Time of Taking, Seizing, and Detaining, of the said Ship, as aforesaid, for and during the Residue of the said Four Calendar Months then to come and unexpired, was totally disabled to perform the same; whereby the Owners and Proprietors of the said Ship totally lost all Profit, Benefit, and Advantage, that might have accrued to them in and from the said Cruise during the Residue of the said Four Calendar Months: Of all which Premises the said Charles Pole afterwards, to wit, on the First Day of May, in the Year of our Lord One thousand Seven hundred and Forty-five, at London aforesaid, in the Parish and Ward aforesaid, had Notice; and was then and there requested by the said George the elder, and George the younger, to pay to them Ninety-eight Pounds, Parcel of the said One hundred Pounds; deducting Two Pounds, Residue thereof, in respect of the said Loss which the said Charles, according to the Form and Effect of the said Writing, or Policy of Assurance, and of his said Promise and Undertaking, then and there*

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there ought to have paid to the said *George* the elder, and *George* the younger.

There were Two other Counts in the Declaration, which, being found for the Defendant, are not material.

To this Declaration the Defendant pleaded the General Issue.

March 3, 1748. The Cause was tried at the Sittings in *London*, before the Lord Chief Justice, by a special Jury; when, at the Request of the Defendant's Counsel, a *special Verdict* was found to the Effect following, on the First Count:

Special Verdict. That the said *Charles*, on the said Thirtieth Day of *August*, in the Year of our Lord One thousand Seven hundred and Forty-four, did sign and subscribe the Policy of Assurance in the within Declaration mentioned, in the Words and Figures thereof, as stated before in the Declaration.

That the said Ship *Goodfellow* was safe at *Jamaica* the 14th Day of *June* 1744; and sailed from thence the same Day upon the Cruize in the Policy before-mentioned; and that the said Ship was an *English* Privateer, and duly commissioned as such by the following Commission duly obtained for that Purpose, and granted out of the High Court of Admiralty of *Great Britain*; and find the Commission *prout*.

And the said Jurors, upon their Oath, further say, That, on the Tenth Day of *June* 1744, the said Ship *Goodfellow*, in her said Cruize, met with and took a *French* Ship called with Money and Goods on board, to the Value of Four thousand Two hundred Pounds Sterling, as a Prize; and that afterwards, to wit, upon the 31st Day of *August* following, *Peter Joyce*, the Captain of the said Ship *Goodfellow*, being, thro' Illness, unable to continue in the Command of the said Ship *Goodfellow*, quitted the said Ship, with the Consent of all the Crew thereof; and the First Lieutenant *John Hussey* was, by joint Consent of the said Captain, and all the Sailors and Mariners belonging to the said Ship, appointed Commander thereof: And the said Jurors, upon their said Oath, further say, That the said Ship *Goodfellow*, under the Command of said *John Hussey* (on whom the said Command would necessarily have devolved, in case of the Captain *Peter Joyce's* Death), was sailing on the said Cruize, for a Port or Place called the *River of Dogs*, to fetch Water, and afterwards, whilst the said Ship was
necef-

necessarily sailing for the said *River of Dogs* aforesaid, and within Four Months, viz. on the 23d of *September* One thousand Seven hundred and Forty-four, the Crew of the said Ship mutinied against the said Captain *John Hussy*, and his Officers; and, by Force, carried the said Ship, against the Will of the said Captain *John Hussy*, and other Officers, who could not resist the same, towards *Jamaica*; and, before her Arrival in Port there, causelessly, against the Consent of the said Captain *John Hussy*, seized the Boat, Fire-arms, and Cutlasses, and carried off the same, and deserted the said Privateer; by which the said Voyage and Cruize was totally prevented and lost for the Remainder of the said Four Months, from the said 23d Day of *September*: And the said Jurors, upon their said Oath, further say, That the said Ship arrived at *Jamaica* upon the 29th Day of *September*, in the said Year 1744, and was there in good Safety at and after the End of the Four Months aforesaid; but was prevented by the said Mutiny and Desertion from further pursuing her said Cruize: And the said Jurors, upon their said Oath, further say, That the Insurance upon the said Ship Goodfellow was made for the Account of Peter Joyce the Owner, and also the Captain, for the former Part of the Cruize; and that the said Peter Joyce had Interest in the said Ship Goodfellow to the Amount of the Sum insured; but whether, upon the whole Matter by them the said Jurors, in Form aforesaid, found, the aforesaid *Charles Pole* did undertake and promise in Manner and Form within written, or not, the said Jurors know not, but pray the Advice of the Court thereupon: And if, upon the said whole Matter by the said Jurors in Form aforesaid found, the said Court shall be of Opinion, That the aforesaid *Charles Pole* did undertake and promise in the Manner and Form within written; then the said Jurors, upon their said Oath, say, That the said *Charles Pole* did undertake and promise in the Manner and Form as the said *George Fitz-Gerald* within hath declared; and assess the Damages of him the said *George Fitz-Gerald*, upon the Occasion within written, besides his Costs and Charges by him, about his Suit in this behalf put, to Ninety-eight Pounds; and, for those Costs and Charges, to Forty Shillings: But if, upon the said whole Matter by the said Jurors, in Form aforesaid, found, the said Court shall be of Opinion, That the said *Charles Pole* did not undertake and promise in Manner and Form as the said

Charles

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Charles Pole within, by his Plea, hath alledged; then the said Jurors, upon their said Oath, say, That the said *Charles Pole* did not undertake and promise in Manner and Form as the said *Charles Pole* within, by his Plea, hath alledged.

20 Oct 1744.
Ship lost.

This Ship was lost in a Hurricane, which happened in *Jamaica* on the 20th of *October* 1744; and what was saved out of the Wreck did not answer the Expence of the Salvage: But as this Event happened Four Days after the Expiration of the Time limited in the Policy, it did not fall under the Consideration of the Jury in this Action.

Judgment in
B. R.

The Special Verdict came on to be argued in the Court of King's-Bench, in *Easter* Term 1750—When the Court of King's-Bench unanimously gave Judgment for the Plaintiff.

Reversed in
Exchequer-
Chamber.

The Defendant thought proper to bring a Writ of Error in the Exchequer-Chamber; where the Cause was argued: And that Court was pleased to reserve the Judgment of the Court of King's-Bench.

The Plaintiff hath brought his Writ of Error in Parliament against the Judgment pronounced in the Exchequer-Chamber—The General Errors are assigned; and the Defendant has pleaded there is no Error: And thereupon, Issue is joined.

It is found, that, by the Mutiny, &c. the Voyage and Cruize was totally prevented and lost, for the Remainder of the Four Months, from the 23d *September*—It is averred, That *Peter Joyce* had Interest, during the Cruize in the Ship, and found, That he had Interest in the Ship, to the Amount of the Sum insured:

That the Ship was in being at and after the End of the Four Months.

The General Question is, Whether an Event has happened, upon which the Under-writers, by the Terms of the Policy, are to pay.

Tho' different Accounts are given of the Invention of Insurances, yet they certainly were brought into Practice by Merchants, for the sake of Trade, and in order to divide the Risque.

1. Open Policies.

The Nature of the Contract originally was, That a specified Voyage should be performed, free from Perils: And, in case of Accident, the Insurer was, for a certain Price, to bear the Trader harmless.

Hence

Hence it followed, that this Contract originally related to the Safety of a Voyage particularly described, in respect either of a Ship or Cargo; and that the Insured could not recover beyond the Amount of his real Loss: Therefore, without abandoning what was saved to the Insurer, he could not recover the whole Value, except in case of a total Loss.

A very inaccurate Form of this Contract was anciently used among Merchants, and drawn by themselves.

It was brought into *England* by Persons who came from Abroad, and settled in *Lombard-street*.

The Terms of this Contract, tho' very imperfectly penned, having acquired a Sense from the Usage of Merchants, the Form is followed to this Day; and every Policy refers to those made in *Lombard-street*.

Hence, contrary to the general Rule, Parole Evidence is admitted to explain this Contract, tho' in Writing: And the Words are controuled, or liberally supplied, by the Intent of the Agreement, the Usage of Merchants, and, above all, by judicial Determinations; which are the strongest Evidence of the received Law of Merchants.

Upon these Policies, the Voyage, and not the bare Safety or Existence of Ship or Cargo, is the Subject-matter of the Insurance.

In Process of Time Variations were made, by express Agreement, from the first kind of Policy: It being troublesome to the Trader to prove the Value of his Interest, and ascertain the Quantity of the Loss, he gave the Insurer a higher Premium to agree to estimate his Interest at a precise Sum, and to give up his Claim to what might be saved; and the Insured on the other Hand, waved any Claims of Contribution, in respect of Accidents, which might obstruct, but not defeat the Voyage.

2. Valued Policies, free of Average and without Benefit of Salvage.

To recover upon this kind of Policy, the Insured need only prove, that he had an Interest, without shewing the Value.

Cases where it might not be proper for the Trader to disclose the Nature of his Interest, introduced a third Kind of Policy; where the Insurer dispensed with the Insured having any Interest either in Ship or Cargo.

3. Policies, Interest or no Interest.

In these two last Kinds of Policies, valued *free from Average*, and Interest or no Interest; it is manifest, that the Performance

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of the Voyage or Adventure, in a reasonable Time and Manner, and not the bare Existence of the Ship or Cargo, is the Object of the Insurance; and so it has been often adjudged *. Many other Sorts of Insurances upon other Sorts of Things, in the

Depaiba and
Ludlow. Tri-
nity, 5 Geo. I.
In Common
Pleas, 1720.

* Insurance on a Hoy, used for a Packet-Boat from *Helvoetsluys* to *Harwich*, Interest or no Interest, without further Account---The Hoy, in her Voyage, was taken by a *Swedish* Ship (tho' no War then between *Sweden* and *Great Britain*) after being Nine Days in the Custody of the *Swedish* Ship---The Hoy was retaken by an *English* Man of War---Carried to *Copenhagen*, and from thence to *Harwich*; where she was at the Time of the Tryal---A Verdict was given for the Plaintiff, subject to the Opinion of the Court of *C. B.*---The Case was twice argued---First by Civilians, and then by common Lawyars; and the Court gave Judgment for the Plaintiff, though the Ship was then in being at *Harwich*---The Question was not, Whether the Property of the Ship was lost by the Capture---But, Whether the Capture was a Peril insured against, and had happened in the Voyage?

Farclay and
Collier. Mi-
chaelmas, 17
Geo. II. B. R.
1744.

Insurance on the Ship called the *Ludlow Castle* Man of War, from *Jamaica* to *England*, Interest or no Interest, *free of Average*, &c.---This Ship was, in her Voyage, compelled by Storms at Sea to put into *Antigua*; where Admiral *Knowles*, being in want of a Hulk for his Majesty's Service, thought proper to convert the *Ludlow-Castle* to that Use---The Treasure on board her was brought home in the *Scarborough*---The Insured brought his Action; and tho' it appeared in Evidence, that the Ship was existing, and upon the Establishment, it was determined, and, by a special Jury, a Verdict given accordingly, That the Voyage from *Jamaica* being lost, the Plaintiff was intitled to recover; which he did.

Storey and
Brown Tri-
nity, 18 and
19 Geo. II.
1746. B. R.

Insurance on the *Sarah* Galley, at and from *London* to *Gibraltar*, and from thence to *London*; valued at the Sum insured---This Ship was chartered from *London* for *Gibraltar*, and thence to the *Nore*, to receive Orders from the Freighter; and the Plaintiff was the sole Owner of the Ship---The Ship arrived at *Gibraltar* in *June*; and was loaded with Wines, by the Freighter's Correspondent, for her Return Voyage---At *Gibraltar* the Ship was seized by the *Salisbury* and *Solebay* Men of War---The Master was turned out of Possession, and several of the Sailors impressed---The Captors proceeded against the Ship and Cargo, as forfeited---The Ship was ordered to be restored; and was sent, by the Freighter's Correspondent, with a Cargo for *Dunkirk*; where she was afterwards overset, and lost---An Action was brought by the Insured; and tho' it was relied on for the Defendant, That the Ship was not totally lost, but had been delivered, after the Capture, to the Agent of the Freighter, and by him sent another Voyage; yet, as the Taking at *Gibraltar* was a Breach of the Policy in the Voyage, whereby the Return Voyage was prevented, a special Jury gave the Plaintiff a Verdict for a total Loss; and he had Judgment accordingly.

H. nbury and
King. Mi-
chaelmas, 19
Geo. II. B. R.
1746.

Insurance on the *Anna*, at and from any Port, or Place, or Degree of Latitude, wheresoever the Ship might be on the 7th May 1741. to any Port, Place, and Degree of Latitude, until her Arrival at *London*, Interest or no Interest, *free of Average*, &c.---This Ship was a Tender to the Ships sent to the *South-Sea* under the Command of Lord *Anson*, and proceeded to the Island of

the Nature of Wagers, or Bargains upon Contingences, have been introduced: Concerning which, the Agreement of the Parties is the Rule which governs:

That a Man shall live such a Time—That one Man shall outlive another—That a Voyage shall be performed in a given Time—That a Ship shall arrive at such a Port before such a Fair—And every other Contingency may be insured at a fixed Sum.

of *Juan Fernandez*; where she was unloaded, and discharged the King's Service: But being in want of Stores to return to *England*, she was sold for the Use of the Fleet, by the Captain, for 300*l.*; for which he received a Bill on the Commissioners of the Navy, afterwards paid to the Plaintiff, the sole Owner, together with the Freight, and all the Sailors Wages, to the Time of the Sale of the Ship---The Plaintiff and Owner also received 6410*l.* for the Freight of the outward-bound Voyage, and 2590*l.* as seven Months Freight; being the Time computed the Ship would have taken to return home. An Action was brought on the Policy; and altho' it was insisted on for the Defendant, That the Ship had not been destroyed by any Peril in the Policy, but sold by the Owner for the Use of the Government; who had, for the Conveniency of the Service, disposed of her as was thought fit; and that the Insured had actually received a Price and Freight for her, as having performed her homeward-bound Voyage; so that, if there was any Loss in Point of Value, it would only be a partial and average Loss, which was expressly not to charge the Insurers; yet, upon all the above Facts (agreed between the Parties) as the Ship had been rendered incapable of performing the Service for which she was fitted out; viz. attending the Fleet in the *South-Seas*, and home---The Plaintiff recovered a Verdict for a total Loss, by a special Jury, agreeable to the Directions of the Court.

Insurance on Goods in the *Dursley Galley*, Interest or no Interest, free of Dean and Lee Average, &c. at and from *Jamaica* to *Bristol*---The Ship was, in her Dicher. Hi-Voyage, taken by a *Spanish* Privateer, and carried into a Port in *Spain*; lary, 19 Geo. II. 1746. where, after being kept Eight Days, she was cut out by an *English* Privateer---The Insured brought an Action on the Policy: The Insurer insisted B. R. it was only an average Loss; the Ship and Goods existing; and, by Statute, were to be restored to the Owners on Salvage: But it was determined; and, by a Special Jury, a Verdict given accordingly---That, notwithstanding the Existence of the Ship and Goods, yet the insured Voyage being lost, the Plaintiff was intitled to recover upon that Policy.

Insurance on the *Dispatch Galley*, Interest or no Interest, free of Average, &c. Whitehead and Bance. Michaelmas, 23 Geo. II. 1749. B. R. from *Jamaica* to *Hull*---In her Voyage she was taken by a *French* Privateer, and carried to *Hamburgh*; and, after being 12 Days in the Hands of the Enemy, she was retaken by *Hurst*, Master of an *English* Ship, and brought to *London*; where she was adjudged to be restored to the Owner, paying Salvage: The Owner sold the Ship, and paid the Salvage---An Action being brought on the Policy, notwithstanding the Ship had not been lost, but was sold by the Owner, it was held to have been a Loss of the Voyage; and the Special Jury gave a Verdict accordingly.

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Many

A famous Insurance Cause

Many Merchants, with a View to their own Gain as well as the publick Service, desiring to engage in fitting out Privateers; the great Expence of which consists in the Outset, the Victualing, the Stores, the Advance-money paid the Sailors, &c. they bethought themselves whether they could divide the Risque by Insurance.

By the First kind of Insurances (open Policies) they could not do it; because there was no Cargo: And the Value of the Ship was not the Measure of the Owner's Expence and Risque.

They could not do it, according to the Second or third Kind, describing any particular Voyage—The way, therefore, taken was, to insure the Ship from all Perils, enumerated as a Privateer, *to cruize during a limited Time*: And such Insurance of Privateers is a modern Practice.

The very End of this Contract shews, that *the Capacity of the Ship to cruize notwithstanding the Perils*, and not the Existence, or the Property, of the Ship, at the End of the limited Term, is the Subject-matter of such an Insurance: And this is not only the obvious Meaning of the Parties to such a Contract, but judicial Determinations have declared this to be the Sense†. The Legislature has considered the Insurance of Pri-

vateers

Pond and
King. Hila-
ry, 21 Geo.
II. 1748.
B. R.

† Insurance for Three Months, from the 21 December 1744, upon the *Salamander* Privateer, to any Port or Places whatsoever, Interest or no Interest, *free of Average*, &c.—The Privateer was taken in the Second Month, by a French Man of War; who took the Captain, and most of the Privateer's Men, with the Commission and Provisions, on board his own Ship; and was carrying his Prize into France: On the 25th of February the Privateer was retaken by an English Ship; which took the *Salamander* with her on a Cruize, and then carried her into *Lisbon*; where she remained—An Action being brought, on the Policy, a Special Verdict was found—Upon arguing of which, the Court of King's-Bench unanimously gave Judgment for the Plaintiff: And against this Judgment no Writ of Error was ever brought.

Jenkins and
Roberts a-
gainst Mac-
kenzie.
Michaelmas,
23 Geo. II.
1749.

Insurance on a Privateer for Two Months—In the First Month she was taken by the Enemy, and retaken by Admiral *Martin*; who, before the End of the First Month, sent her into *Bristol*—The Privateer had received no Damage in the Engagement in which she had been taken, but what might have been repaired without any great Expence, if she could have been put into a Dock: But when she arrived at *Bristol*, the Docks were full, and Workmen so scarce, that she could not be repaired before the Term in the Policy expired—The Plaintiffs brought their Action—The Defendant insisted, That the Ship existing (he not having insured against the Fulness of Docks, and Scarcity of Workmen) he could not be liable for a Loss:

vateers as beneficial; and plainly understood, that the Existence of the Ship was not the Subject-matter of the Insurance.

An Act, 19 Geo. II. which prohibits Insurances, Interest Assurance on or no Interest, provides; That Assurance on Private Ships of private Ships War, fitted out by any of his Majesty's Subjects (*solely to cruize*) of War may be made for the Owners thereof, Interest or no Interest, *free of Average*, and without Benefit of Salvage to the Assurers.

There was no Occasion to: except the Case of Privateers, had the Existence of the Ship been looked upon as the only Object; the Value of the Insurance might have been confined to the Interest in the Ship.

Upon some of the Reasons and Authorities, above referred to, as well as others, the Court of King's-Bench gave Judgment, in this Case, for the Plaintiff.

THE OBJECTIONS to the Judgment of the Court of King's-Bench, principally relied upon, seem to be these:

As the Ship existed at the End of four Months, nothing was to be paid; the Insurers only undertaking, That *the Ship* should not be totally lost, or destroyed, within that Time. 1st Objection.

This Objection proves, That if, during the whole four Months, the Ship had been, by Force, turned into a Fire-ship, or a Transport; detained in Port by an Embargo; taken and kept by Privateers; arrested and detained by Princes; so disabled in a Storm the first Day, as not to be capable of going to Sea during the Time; provided the Owners had the Ship or her Hull again the Insurers were to pay nothing; which, besides contradicting so many Principles and Authorities, proves more than will be seriously contended for, and drives the Respondent to another Objection. Answer.

Suppose the Meaning was to insure the Ship's Capacity to cruize (notwithstanding the Perils mentioned) during four Months: 2d Objection.

a Loss: Yet, as the Two Months Cruise was lost by a Peril within the Policy, the Plaintiffs had a Verdict.

An Action upon the very same Policy now in question against another Under-Fitz-Gerald writer, in which the Plaintiff declared *verbatim*, as in this Case---Defended and Wain-at the Tryal---A Verdict for the Plaintiff, by a Special Jury, agreeable house 23 Geo. 1 to the Directions of the Court---Judgment accordingly---The Defendant 11. 1749. K. B. brought a Writ of Error---But, despairing of Success, suffered it to be non-prossed, and paid the Money and Costs

yet,

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yet, unless she was prevented by any of the Means mentioned in the Policy, during the whole Time, nothing is to be paid: For the Insurance must be taken to be only against the entire Loss of the whole Time: But here, in this Case, the Ship cruised Part of the Time.

Answer.

At this Rate of arguing, if the Ship was safe at any Time on the 15th *June*, there never could be a Loss afterwards: Tho' she had been burnt, sunk, or taken, on the 16th, the Insurers would not be liable; which, besides contradicting all the Authorities, in the Cases of Privateers (in every one of which the Ship had cruised some time), reduces the Four Months to the First Instant of that Time; and therefore is a flat Contradiction to the express Terms of the Policy.

3d Objection.

If the Ship's Capacity to cruise, and not the bare Existence of the Ship, was the Thing insured, it is not found, that *Peter Joyce* had any Interest in the Cruise, only that he was Owner of, and had Interest in the Ship, during the Cruise.

Answer.

The Property of the Ship carries an Interest in her Capacity to cruise: A publick Law having given Prizes, taken by Privateers, to and among the Owner and Owners of such Ship or Vessel, and the several Persons that shall be on board the same, in such Shares and Proportions, as shall be agreed on with the Owner or Owners of such Ship or Vessel: And, to suppose the Owner to have parted with his whole Interest in the Use of the Ship, during the Cruise, and yet to have retained his Interest in the Privateer, during the Cruise, is to make an Intendment contrary to the Averment in the Declaration, and Finding of the Verdict; and to suppose a Case which never existed in Fact—That the Owner of a Ship lets her out, on Freight, to cruise as a Privateer.

The Parties on this Contract have agreed, and understood, That the Use of this Ship was attendant upon the Property: For they have insured the Ship's Capacity to cruise, and valued it on the Ship.

There have been judicial Determinations, and one upon this very Policy, in favour of what the Plaintiff in Error contends for, unreversed, and unappealed from—People probably have transacted Losses upon their Authority, and entered into Contracts

tracts, according to the Sense judicially received—In mercantile Contracts, especially for the sake of Certainty, it is better to adhere to Decisions, even if they were at first erroneous—All new Contracts are made in the Sense of the judicial Determinations: And, supposing an Interpretation at first wrong, it becomes afterwards unjust to vary from it, and highly inconvenient.

Wherefore, and other Reasons to be offered, the Plaintiff in Error hopes the Judgment of the Court of Exchequer-Chamber shall be Reversed, and the Judgment of the Court of King's-Bench Affirmed.

W. MURRAY.

A. HUME-CAMPBELL.

George Fitzgerald, *surviving Partner* } Plaintiff in
of George Fitzgerald *the Elder, deceased,* } Error.
ceased, - - - - -

Charles Pole, - - - - - } Defendant
in Error.

The CASE of the Defendant in Error.

IN the Month of *August* 1744, in the time of the late War, the Plaintiff, and his late Partner, as Agents, and for the Account, of one *Peter Joyce*, caused a Policy of Insurance to be made out in the Name of *George Fitzgerald* and Co. whereby they caused themselves to be insured, lost or not lost, at and from *Jamaica*, to any Ports and Places where and whatsoever, at Sea or Shore, a cruising from Port to Ports, and Place to Places, for and during the Term and Space of Four Calendar Months, upon the Body, Tackle, Apparel, Ordnance, Munition, Artillery, Boat, and other Furniture, of and in the Ship or Vessel called the *Goodfellow* Privateer, the said *Peter Joyce* Master; beginning the Adventure upon the said Ship, &c. from and immediately following the 14th Day of *June* then last past; and so should continue and endure until the said Ship should

B.

A famous Insurance Cause

should be arrived at any Ports and Places where and whatsoever a cruising from Port to Ports, and Place to Places, for and during the Term and Space of four Calendar Months above-written, without Prejudice to that Insurance: And the Ship, &c. for so much as concerned the Assureds, was thereby valued (One-half Part of the Ship.) at 1,000 *l.* Sterling. The Perils insured against, and specified in the Policy, which is stated, *verbatim*, in the Special Verdict herein after-mentioned, are such and the same as are usually enumerated in Policies of Insurance: And, by the Terms of the Policy, the Assured, in case of Loss, were to abate 2 *l.* per Cent. and the Assurers to be free from all Average.

31 Aug. 1744. On this Policy the Defendant underwrote the Sum of one hundred Pounds; and several other Persons, at the same Time, also underwrote it for different Sums; amounting, with the 100 *l.* underwrote by the Defendant, to the Sum of 1,000 *l.*

14 June 1744. The Ship sailed from *Jamaica* on her Cruize; and
10 July 1744. Took, and made Prize of, a *French Ship*, with Money and Goods aboard to the Value of 4,200 *l.*

23 Sept 1744. The Crew of the Privateer, apprehending a Want of Water and Provisions, insisted on returning home with her; and accordingly steered for *Jamaica*: And on

29 Sept. 1744. About a Fortnight before the End of the four Months, the Privateer arrived safe at her Port in *Jamaica*; and there continued in good Safety until after the End of the four Months:

From this Time till *Michaelmas* Term 1748, upwards of four Years, *Peter Joyce*, and his Agent the Plaintiff, acquiesced, without pretending there was any Loss within the Terms of this Insurance.

But, after this Acquiescence, the said *Peter Joyce*, or the Plaintiff, as his Agent, pretending, That such the Crew's bringing back the Privateer into her Port, and the not continuing the Cruize till the End of the four Months, was such an Interruption of the Cruize, as amounted to a total Loss within the Policy, tho' the Ship itself was in Port, and in good Safety; did, on that Foundation, in *Michaelmas* Term 1748, bring an Action on the Policy, in the Name of the Plaintiff, as surviving Partner of *George Fitzgerald*, deceased, against the Defendant, to recover the Sum by him subscribed, after a Deduction

Michaelmas
Term 1748.

tion of the 2 l. *per Cent.* as on a total Loss: And, in order to this,

The Plaintiff, by his Declaration, alledged, that whereas, on the thirty-first Day of *August* in the Year of our Lord One thousand seven hundred and forty-four, he the said Plaintiff, according to the Custom of Merchants, caused to be made a certain Writing, or Policy of Assurance; purporting thereby, and containing therein, that the said Plaintiff, as well in his own Name, as for and in the Name and Names of all and every other Person or Persons to whom the said did, might, or should appertain, in Part, or in all, did make Assurance, and caused himself and them, and every of them, to be insured, lost or not lost, at and from *Jamaica*, to any Ports and Places where and whatsoever, at Sea or Shore, a cruising from Port to Ports, and Place to Places, for and during the Term and Space of four Kalendar Months, upon the Body, Tackle, Apparel, *Ordnance*, *Munition*, *Artillery*, *Boat*, and other Furniture, of and in the good Ship or Vessel called the *Goodfellow* Privateer, whereof was Master, under God, for that present Voyage, *Peter Joyce*, or whosoever else should go for Master in the said Ship, or by whatsoever other Name or Names the same Ship, or the Master thereof, was or should be named or called; beginning the Adventure upon the said Ship, &c. from and immediately following the Fourteenth Day of *June* then last; and so should continue and endure until the said Ship, with all her said Tackle, Apparel, &c. should be arrived at any Ports and Places where and whatsoever, a cruising from Port to Ports, and Place to Places, for and during the Term and Space of four Calendar Months, commencing as above written, without Prejudice to that Insurance; the said Ship, &c. for so much as concerned the Assured, was and should be valued (one half Part of the Ship) at one thousand Pounds Sterling, without further Account to be given by the Assured for the same. Touching the Adventures and Perils which they the Assurers were contented to bear, and did take upon them, in that Voyage they were, of the Seas, Men of War, Fire, Enemies, Pirates, Rovers, Thieves, Jettizons, Letters of Mart and Countermart, Surprisals, Takings at Sea, Arrests, Restraints, and Detainments, of all Kings, Princes, and People, of what Nation, Condition, or Quality, soever, Barre-try of the Master and Mariners, and of all other Perils, Losses,

Declaration.

A famous Insurance Cause

and Misfortunes, that had or should come to the Hurt, Detriment, or Damage, of the said Ship, &c. or any Part thereof: And in case of any Loss or Misfortune, it should be lawful to the Assured, their Factors, Servants, and Assigns, to sue, labour, and travail, for, in, and about the Defence, Safeguard, and Recovery, of the said Ship, &c. or any Part thereof, without Prejudice to that Insurance; to the Charges whereof they the Assurers would contribute each one according to the Rate and Quantity of his Sum therein assured; And: it was agreed by them the Insurers, that that Writing, or Policy of Assurance, should be of as much Force and Effect as the surest Writing, or Policy of Assurance, theretofore made in *Lombard-street*, or in the *Royal Exchange*, or elsewhere in *London*: And so they the Assurers were contented, and did thereby promise and bind themselves, each one for his own Part, their Heirs, Executors, and Goods, to the Assured, their Executors, Administrators, and Assigns, for the true Performance of the Premises; confessing themselves paid the Consideration due unto them for that Assurance by the Assured, at and after the Rate of twenty Guineas per Cent: And in case of Loss (which God forbid!) the Assured to abate but two Pounds per Cent. *the Assurers being free from all Average*; as by the said Writing, or Policy of Assurance, it did and might more fully appear: Of which said Writing, or Policy of Assurance, he the said *Charles* afterwards had Notice; and thereupon, he the said *Charles*, in Consideration that the Plaintiff had undertaken, and then promised the said *Charles*, to perform and fulfil every thing in the said Writing, or Policy of Assurance, on his Part and Behalf to be performed and fulfilled; and had then and there paid to the said *Charles* twenty Guineas, as a Reward for the Assurance of one hundred Pounds upon the said Premises mentioned in the said Writing, or Policy of Assurance; he the said *Charles* undertook, and then and there faithfully promised the Plaintiff, that he the said *Charles* would become, and he did become, an Assurer to the Plaintiff, for the Sum of one hundred Pounds; and then and there subscribed the said Writing, or Policy of Assurance, for the Assurance of the said one hundred Pounds. And the Plaintiff further saith, the said Insurance was made for and on account of, and in Trust for, and for the Use and Benefit of, *Peter Joyce*; and that the Interest which the said *Peter Joyce*,

Joyce, at the Time of making the said Insurance, as aforesaid, and during the said Cruize and Voyage thereafter mentioned, had in the said Ship, being a Privateer, amounted to a large Sum of Money, to wit, two thousand Pounds, and upwards ; and that the said Ship, on the said 14th Day of *June* One thousand seven Hundred and forty-four, being at *Jamaica* aforesaid, in Parts beyond the Seas, in good Safety, set sail and departed from thence in and upon her said intended Voyage a cruising, according to the Intention of the said Writing, or Policy of Assurance ; and, from and after the said Fourteenth Day of *June*, was a cruising from Port to Ports, and Place to Places, until the said Ship afterwards, and within the said four Calendar Months, commencing from the said Fourteenth Day of *June*, to wit, on the twenty-third Day of *September* in the said Year of our Lord One thousand seven hundred and forty four, then sailing upon the high Seas, and at a great Distance from *Jamaica* aforesaid, and proceeding in her said Voyage, was, in a mutinous manner, by Force and Arms, against the Will of the then Master and Officers of the said Ship, seized, taken, restrained, and detained, by the greatest Part of the Mariners then on board her ; and the Command, Direction, and Government, thereof, were taken from the said Master ; and the said Ship was not permitted to sail and proceed in her said Voyage a cruising any longer ; but was then and there, contrary to and against the Will of the said Master and Officers, by the said Mariners, in a mutinous manner, carried back again to *Jamaica* aforesaid ; where the said Mariners afterwards, to wit, on the thirtieth Day of the same *September*, being then and there arrived with the said Ship, against the Will of the said Master and Officers, ran away from the said Ship, *with the Boats belonging to the same Ship, and totally quitted and deserted her ;* whereby, and by means whereof, the said Ship did not, nor could, perform her said Voyage a cruising, for and during the said four Calendar Months, according to the Intention of the said Writing, or Policy of Assurance ; but, from the Time of Taking, Seizing and Detaining, of the said Ship, as aforesaid, for and during the Residue of the said four Calendar Months then to come, and unexpired, was totally disabled to perform the same ; whereby the Owners and Proprietors of the said Ship totally lost all Profit, Benefit, and Advantage, that might have ac-

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crued to them in and from the said Cruize during the said Residue of the said four Kalendar Months : Of all which Premises the said *Charles* had Notice ; and was requested to pay to the Plaintiff Ninety-eight Pounds, Parcel of the said One hundred Pounds ; deducting two Pounds, Residue thereof, in respect of the said Loss which the said *Charles*, according to the Form and Effect of the said Writing, or Policy of Assurance, and of his said Promise and Undertaking, then and there ought to have paid to the said Plaintiff.

There were, in the Declaration, two other Counts : And the Defendant pleaded, that he did make such Promises : Whereupon Issue was joined.

Tryal at the
Sittings after
Hilary Term
1748.
Special Ver-
dict

Upon the Tryal of the Action, the Second and Third Counts, in the Declaration, were found for the Defendant :

But, as to the first Promise and Undertaking, alledged in the Declaration, the Jury found specially, That the said *Charles*, on the said thirty-first Day of *August*, in the Year of our Lord One thousand seven hundred and forty-four, in the City of *London*, did sign and subscribe the Policy of Assurance in the Declaration mentioned, in the Words and Figures following ; that is to say,

The Policy.

IN the Name of God, *Amen*. *George Fitzgerald*, and Company, as well in his own Name, as for and in the Name and Names of all and every other Person or Persons to whom the same doth, may, or shall appertain, in Part, or in all, doth make Assurance, and causeth himself and them, and every of them, to be insured, lost or not lost, *at and from Jamaica, to any Ports and Places where and whatsoever, at Sea or Shore, a cruising from Port to Ports, and Place to Places, for and during the Term and Space of four Calendar Months*, upon the Body, Tackle, Apparel, Ordnance, Munition, Artillery, Boat and other Furniture, of and in the good Ship or Vessel called the *Goodfellow* Privateer, whereof is Master under God, for this present Voyage, *Peter Joyce*, or whosoever else shall go for Master in the said Ship, or by whatsoever other Name or Names the same Ship or the Master thereof, is or shall be named or called, beginning the Adventure upon the said Ship, &c. from and immediately following the

the fourteenth Day of *June* last; and so shall continue and endure until the said Ship, with all her said Tackle, Apparel, &c. shall be arrived *at any Ports and Places where and whatsoever, a cruising from Port to Ports, and Place to Places, for and during the Term and Space of four Calendar Months, commencing as above written,* without Prejudice to this Insurance; the said Ship, &c. for so much as concerns the Assured, is and shall be valued (*One half-Part of the Ship*) at one thousand Pounds Sterling, without further Account to be given by the Assured for the same. Touching the Adventures and Perils which we the Assurers are contented to bear, and take upon us, in this Voyage, they are, of the Seas, Men of War, Fire, Enemies, Pirates, Rovers, Thieves, Jettizons, Letters of Mart and Countermart, Surprisals, Takings at Sea, Arrests, Restraints, and Detainments, of all Kings, Princes, and People, of what Nation, Condition, or Quality soever, Barretry of the Master and Mariners, and of all other Perils, Losses, and Misfortunes, that have or shall come, to the Hurt, Detriment, or Damage, of the said Ship, &c. or any Part thereof: And in case of any Loss or Misfortune, it shall be lawful to the Assureds, their Factors, Servants, and Assigns, to sue, labour, and travail, for, in, and about, the Defence, Safeguard, and Recovery, of the said Ship, &c. or any Part thereof, without Prejudice to this Insurance; to the Charges whereof we the Assurers will contribute each one according to the Rate and Quantity of his Sum herein assured: And it is agreed by us the Insurers, that this Writing or Policy of Assurance shall be of as much Force and Effect as the surest Writing, or Policy of Assurance, heretofore made in *Lombard-street*, or in the *Royal-Exchange*, or elsewhere, in *London*; and so we the Assurers are contented, and do hereby promise and bind ourselves, each one for his own Part, our Heirs, Executors, and Goods, to the Assured, their Executors, Administrators, and Assigns, for the true Performance of the Premises; confessing ourselves paid the Consideration due unto us for this Assurance, by the Assured, at and after the Rate of twenty Guineas *per Cent*: And in case of Loss (which God forbid!) the Assured to abate but two Pounds *per Cent. the Assurers being free from all Average.* In Witness whereof we the Assurers, have subscribed our
Names

Description of
the Voyage in
the Policy.

The Assurers
to be free
from all Ave-
rage.

A famous Insurance Cause

Names and Sums. Affured in *London*, this 30th of *August* 1744.

100*l.* *Charles Pole*, One hundred Pounds Prem^o: Received 31st *Aug.* 1744.

“ And the said Jurors further said, That the said Ship *Goodfellow* was safe at *Jamaica* the 14th Day of *June* One thousand seven hundred and forty-four; and sailed from thence the same Day upon the Cruize in the Policy before-mentioned; and that the said Ship was an *English* Privateer, and duly commissioned as such by the Lords Commissioners of the Admiralty of *Great Britain*.

“ And the said Jurors further said, That during all the Time of the said Cruize, there was open War carrying on by the King of *Great Britain* against the *French* King, and the King of *Spain*; and that, on the tenth Day of *July* One thousand seven hundred and forty-four, the said Ship *Goodfellow*, in her said Cruize, met with a *French* Ship with Money and Goods on board, to the Value of *Four thousand and two hundred Pounds Sterling*, and made Prize thereof; and that afterwards, to wit, upon the 31st Day of *August* following, *Peter Joyce*, the Captain of the said Ship *Goodfellow*, being, thro' Illness, unable to continue in the Command of the said Ship *Goodfellow*, quitted the said Ship, with the Consent of all the Crew thereof; and the First Lieutenant thereof, *John Hussy*, was, by joint Consent of the said Captain, and all the Sailors and Mariners belonging to the said Ship, appointed Commander thereof: And the said Jurors, upon their said Oath, further said, That the said Ship *Goodfellow*, under the Command of the said *John Hussy* (on whom the said Command would necessarily have devolved, in case of the said Captain *Peter Joyce*'s Death) was sailing on the said Cruize, for a Port or Place called the *River of Dogs*, to fetch Water; and afterwards, whilst the said Ship was necessarily sailing for the said *River of Dogs*, as aforesaid, and within the Four Months mentioned in the said Policy, viz. on the Twenty-third Day of *September* One thousand seven hundred and forty-four, the Crew of the said Ship mutinied against the said Commander *John Hussy*, and Officers; and, by Force, carried the said Ship, against the Will of the said Commander *John Hussy*, and Officers, who could not resist the same, back towards
“ *Jamaica*;

“ *Jamaica*; and, before her Arrival in Port there, causelessly,
“ against the Consent of the said Commander *John Hufsey*,
“ seized the Boat, Fire-arms, and Cutlasses, belonging to the
“ said Ship *Goodfellow*, and carried off the same, and deserted
“ the said Privateer; by which the said Cruise was totally pre-
“ vented and lost for the Remainder of the said four Months,
“ from the said twenty-third Day of September: And the said
“ Jurors, upon their said Oath, further said, That the said Ship
“ *Goodfellow* arrived at *Jamaica* upon the twenty-ninth Day of
“ September in the said Year One thousand seven hundred and
“ forty-four, and was there in good Safety at and after the End
“ of the four Months aforesaid; but was prevented by the said
“ Mutiny and Desertion, as aforesaid, from further pursuing
“ her said Cruise: And the said Jurors, upon their said Oath,
“ further said, That the Insurance upon the said Ship *Goodfellow*
“ was made for the Account of *Peter Joyce*, the Owner, and also
“ the Captain for the former Part of the said Cruise; and that
“ the said *Peter Joyce* had Interest, during all the Time of the said
“ Cruise, in the said Ship *Goodfellow*, to the Amount of the Sum
“ insured: But whether, upon the whole Matter by them the
“ said Jurors, in Form aforesaid, found, the aforesaid *Charles Pole*
“ did undertake and promise in Manner and Form aforesaid, or
“ not, the said Jurors know not; but pray the Advice of the
“ Court thereupon: And if, upon the whole Matter by them
“ the said Jurors, in Form aforesaid, found, the said Court shall
“ be of Opinion, That the aforesaid *Charles Pole* did undertake
“ and promise in Manner and Form aforesaid; then the said
“ Jurors, upon their said Oath, say, That the said *Charles Pole*
“ did undertake and promise in the Manner and Form as the said
“ *George Fitz-Gerald* hath declared; and assess the Damages of
“ him the said *George Fitz-Gerald*, upon the Occasion, besides
“ his Cost and Charges by him, about his Suit in this behalf,
“ sustained, to Ninety-and-eight Pounds; and, for those Costs
“ and Charges, to Forty Shillings: But if, upon the said whole
“ Matter by the said Jurors, in Form aforesaid, found, the said
“ Court shall be of Opinion, That the said *Charles Pole* did not
“ undertake and promise in Manner and Form as the said *Charles*
“ *Pole*, by his Plea, hath alleged; then the said Jurors, upon their
“ said Oath, say, That the said *Charles Pole* did not undertake and
“ promise in Manner and Form as the said *Charles Pole*, by his
“ Plea, hath alleged.”

Upon

Easter Term
1750.

Easter Term
1752.

Upon this Verdict the Court of King's-Bench, upon Argument, gave Judgment for the Plaintiff; upon which a Writ of Error was brought in the Exchequer-Chamber; and, after twice arguing the Case, the Judgment, by the unanimous Opinion of all the eight Judges of that Court, was reversed.

Upon which Judgment of Reversal a Writ of Error is brought in Parliament, to reverse the Judgment of the Court of Exchequer-Chamber, and to affirm the Judgment of the Court of King's-Bench, upon a general Assignment of Error in the said Judgment of the Court of Exchequer-Chamber.

But the Defendant hopes, the said Judgment of the Court of Exchequer, reversing the Judgment of the Court of King's-Bench, shall be Affirmed, for the following, among other,

R E A S O N S :

- I. The *Insurer* being, by the Terms of the Policy, *free from all Average*, the Plaintiff could not be intitled to recover, but in case of a total Loss; and the Ship being found by the special Verdict, to be in good Safety, at her proper Port, at and after the End of the four Months for which the Insurance was made, there could be no such Loss.
- II. *The Ship alone is insured, and not the Cruize*; and to contend otherwise is not only contrary to the express Words, and plain Meaning and Intention, of the Policy, by which the *Ship alone* is repeatedly expressed to be the Thing insured; but it is also contrary to the Nature of an Insurance; the Safety of the Ship itself, or of whatever else is the immediate Object of the Insurance, being the only thing insured; and not any uncertain Benefit which may arise to the Owner by means or in consequence of it: Nor can any such consequential Benefit be properly the Subject-matter of Insurance, as it is not capable of being estimated. But,
- III. Supposing the Cruize, or the Benefit of the Cruize, or the free Use of the Ship for the Cruize, to be the Thing insured; yet even of any of these there is no total Loss; the *Ship* having actually cruised till within about a Fortnight of the whole Time, and having taken a rich Prize of the Value of 4,200*l.* Sterling. And,

IV. Sup-

pleaded before the House of Lords.

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IV. Supposing, as contended for by the Plaintiff, that the Cruize, or Benefit of the Cruize, or the free Use of the Ship for the Cruize, was the Thing insured; and that what is found by the Verdict amounts to a total Loss of any of these; yet it is not found, nor is it averred in the Declaration, that *Peter Joyce*, for whose Benefit the Insurance was made, had any Interest in the Cruize, but only in the Ship itself; and to recover in an Action upon a valued Policy, the Plaintiff must aver an Interest in his Declaration, and prove it at the Tryal.

For these, and divers other Reasons to be offered at the Hearing, it is humbly hoped, that the Judgment given for the now Defendant, the then Plaintiff in Error, by the Court of Exchequer-Chamber, shall be Affirmed, with Costs.

R. HENLEY.

THO. SEWELL.

My Lord Chancellor, after having heard all that was alledged on both Sides, summed up the Whole, and gave his Opinion in Favour of the Defendant: And the following Decree passed in the House of Lords:

Die Veneris 1^o Martii 1754.

WHEREAS, by Virtue of his Majesty's Writ of Error, returnable into the House of Lords in Parliament assembled, a Record of the Court of Exchequer-Chamber was brought into this House, the 18th Day of *December* 1753, wherein *George Fitz-Gerald* is Plaintiff, and *Charles Pole* Defendant; and Counsel having been heard as well on *Wednesday* the 20th of *February* last, as on the *Thursday* and *Friday* following, to argue the Errors assigned upon the said Writ of Error; and the Judges who were ordered to attend "having been heard *seriatim*, " as well on *Wednesday* last as this Day, to deliver their Opinions, with their Reasons, upon certain Points of Law to them proposed, and due Consideration had of what was offered on either Side in this Cause: It is Ordered and

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A famous Cause of Insurance, &c.

" Adjudged by the Lords Spiritual and Temporal in Parlia-
 " ment assembled, That the Judgment given in the said Court
 " of Exchequer-Chamber, reversing a Judgment given in the
 " Court of King's-Bench, be, and the same is hereby, Affirmed;
 " and that the Record be remitted. And it is further Ordered,
 " That the Plaintiff in Error do pay, or cause to be paid, to the
 " Defendant in Error, the Sum of Five Pounds for his Costs in
 " this House."

ASHLEY COWPER, *Cler' Parliament*



Some

Some Mercantile Observations on the preceding Tryal.

AS we know not what Particulars were alledged in the Pleadings before the House of Lords, we shall take the Liberty to add here a few mercantile Remarks, which we hope will enable every body to judge rightly of the Matter:

First, then, in our humble Opinion the chief thing necessary to the forming of a right Judgment of the Case was to shew wherein the Words of this Policy differed from those of other Policies made at Interest or no Interest, on which, in Cases somewhat like this, Insurers had formerly been condemned to pay total Losses. For it appears to us, that when this Cause was first heard it was not sufficiently explained to the Judge and the Jury, that although it is said in this Policy that the Insurers should be free of Average, it is not said therein that the Insurance should be without Benefit of Salvage; which Clause constitutes the main Difference between Policies made on Interest or no Interest, and those made on real Interest; a Renunciation of the Salvage being never made in the latter. Hence on Ships insured at Interest or no Interest once taken, although afterwards retaken, the Insurers have been condemned to pay total Losses, because they renounced the Benefit of Salvage. In Insurances made at Interest or no Interest, free from Average, and without Benefit of Salvage (which, though they are very hazardous, high Premiums will tempt Insurers to underwrite) the Words of the Policies clearly import, that such Insurances are to be understood merely as Wagers, that the Ships shall make the Voyages mentioned in the Policies, and the Insurers shall have nothing to do with Averages or Salvages. If in the present Case the Policy had been made with this Condition, "not to have any Benefit of Salvage," probably the Court of Exchequer, considering the literal Sense of the Words, and what Decisions had passed formerly on such Policies, might have confirmed the Sentence given in the Court of the King's-Bench, condemning the Insurers to pay a total Loss; since the Ship for the Time the Mutineers were Masters of her, might be esteemed as lost to the Owners, and the Insurers had renounced the Salvage; though we cannot help saying, that we never could reconcile ourselves to some Part of the

Some Mercantile Observations

the Doctrines upon which, in Tryals of this Nature, Verdicts have of late been given.

Secondly, With regard to the Case of *Pond* versus *King*, cited by the Plaintiff's Counsel, where a Ship being taken, though afterwards retaken, the Insurers were condemned to pay a total Loss, we observe that in the printed Case it is only said that it was an Insurance on Interest or no Interest, free of Average, &c. —and it is in this &c. left out, that we find a material Difference between that and the present Policy. For in *Pond's* Policy, which stands at full Length in *Beawe's Lex Mercatoria* pag. 272, after the Words *to be free of Average*, follows *and without Benefit of Salvage*, which this Policy has not. We also find in some of the other Cases of Interest or no Interest Policies, alledged here, that a Stop is made after the Words *free of Average*; and perhaps they might contain the other Condition also, *without Benefit of Salvage*; so that all those Policies might differ from the present one, and prove nothing in its Favour.

Thirdly, Although the Act of Parliament, 19 *Geo. II.* permits, for the Encouragement of Privateering, Insurances to be made on Privateers at Interest or no Interest, free of Average, and without Benefit of Salvage; it does not follow that all Policies on Privateers were made so, or are to be construed as if these Conditions had been expressed in them.

The Plaintiff's State of the Case **A** says: "The general Question is, Whether an Event has happened upon which the Underwriters by the Terms of the Policy are to pay?" Now it must, we think, be allowed that something did happen for which the Insurers had made themselves answerable, and that was the Barratry of the Mariners. For the Mutiny of the Mariners, and their actually taking the Command from the Master, was certainly Barratry; and the Ship, during the Time she remained out of the Power of the Captain, might be considered as lost to the Owners; but as the Mutineers carried her back to *Jamaica*, and there left her, and the Benefit of Salvage was not given up by the Insurers, it was no total Loss, and nothing else could be demanded, than what was proved to have been lost by the Mutiny. Now as it appears that the Crew actually ran away, within the Term for which the Ship was insured, with Part of her Fire-Arms and Boats, things expressly mentioned in the Policy, and included in the Valuation of the

the

the Ship, how much or how little soever this might amount to, it certainly was no Average, but a partial Loss for which the Insurers were liable to pay: And though we are sensible that the Insurers had nothing to do with the Success or Mis-carriage of the Cruise, yet, as it is well known to every Insurer that the Amount of the Provisions put on Board for the Use of the Voyage, and the Money advanced to the Sailors, are usually included and insured in the Valuation of the Ship, it is a question with us, whether the Consumption of the Provisions by the Mutineers, whilst they had the Command of the Ship, and neglected the Service of the Owners, ought not to be considered as a Loss to the Owners, which the Insurers were to make good? Thus much we have thought proper to alledge for and against the Plaintiff's printed Case.

As to the Defendant's printed Case **B** we observe, that one of the Reasons alledged for affirming the Judgment of the Court of Exchequer, is, that the Insurers being by the Terms of the Policy free from all Average, the Plaintiff could only be entitled to recover in Case of a total Loss. But in our Opinion the Inference is not just: For the Stipulation to be free from Average did not make them free from the actual Losses sustained by Barratry and Mutiny, which to our experimental Knowledge were never comprehended under the Word *Average*. Though inserting a Clause in Policies on Privateers, not to be liable to bear any Losses resulting from the Mutiny and Disobedience of the Crews, may be a very prudent Consideration for the Insurers in Time to come, it was not done in this Case, where, by the Words *to be free of Average*, could only be meant that the Insurers should be free of all Damages resulting from the Cruise, particularly what the Ship might sustain either in attacking or being attacked, crowding Sail, or chasing, and thereby losing or breaking any thing, Damage sustained by boarding, running foul of other Vessels, receiving Shot in her Hull and Rigging &c. We make no doubt but that, if a separate Demand had been made by the Insured for the things run away with by the Mariners, the Insurers would have paid it.

Misinformation perhaps led the Insured to try, whether this valued Policy would not have the same Effect as other Policies made on Interest or no Interest with the Conditions *to be free of Average*

Average, and without Benefit of Salvage, by Virtue whereof the Insurers had, in a parallel Case, been condemned to pay a total Loss; and it so happened that the Jury, misunderstanding the thing, on the first Hearing of this Cause in the Court of King's Bench gave their Verdict for a total Loss.

But it seems the Insurers were satisfied in their own Minds that the Cases which had been alledged, and had misled the Judge and the Jury, differed greatly from theirs, as has been shewn above. They therefore brought a Writ of Error in the Exchequer Chamber, where after twice arguing the Case, the Judgment, by the unanimous Opinion of all the eight Judges of that Court, was reversed; whereupon a Writ of Error was brought in the House of Lords, to reverse the Judgment of the Exchequer Chamber. But instead of that the Lords confirmed it, and ordered that the Plaintiff in Error should pay, or cause to be paid, to the Defendant in Error, the Sum of Five Pounds for his Costs in that House.

In Consequence of this Decree the Insured was obliged to pay back the full Money to the Insurer, which was reversing the first Decree given.

Upon the whole we may observe that the Rule laid down in our Essay §. 8. will, we believe, hold good in every Court of Equity in *England*. It runs thus:

“ When a Judge, in disputed Cases, finds no apparent Fraud
 “ committed, he cannot well act otherwise, than to oblige the
 “ Merchants to adhere to, and fulfill their Contracts, as the best
 “ Way of promoting Credit and Trade in general.”

